

TRANSITIONAL JUSTICE IN PRACTICE: TRUTH COMMISSIONS AND POLICIES OF VICTIM REPARATIONS

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*“Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.”*

W. B. Yeats.

Such a grim outlook almost one hundred years ago, and yet, it eerily feels like a fitting description of the chaos of our times. It is not that the best all lack conviction, they just sometimes have to shout louder and fight harder. May the best never lose their conviction.

Throughout this very interesting journey, I have come to relearn myself and I am glad to have had a number of committed people in my corner to keep me going.

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And now, I welcome a new chapter to my life.

Abstract

Over the years, truth commissions have become an appealing mechanism for dealing with large scale human rights violations. One of the reasons for this is that they avail varied opportunities for approaching the many shades of grey that characterise most conflicts. The mandates have also evolved beyond establishing the truth. It is now common for truth commissions to propose reparations programmes for victims as part of its recommendations. However, considering that truth commissions are temporary establishments with limited time frames and restrictive mandates, what is the future of the recommendations they propose in their reports? To further compound this situation, there is often a considerably diminished interest in the issues truth commissions raise in the post- truth commission phase.

The objective of this research is to study the recommendations relating to reparations that truth commissions have issued. It examines how different stakeholders respond to the recommendations and the frameworks that have been set up (or not) to follow-up and implement specific recommendations.

Two case studies, Sierra Leone Truth and Reconciliation Commission and Ghana National Reconciliation Commission are selected. Whereas these two cases both recommended reparations for victims, different approaches for the follow-up were instituted, both in the reports and during the post- truth-commission phase. How is this related to the actual realities on the ground with regard to victims' reparations? This research takes on four major issues in relation to truth commissions and reparations: the inclusion or omission of reparations in the mandate of truth commissions; the content of the recommendations (what reparation, and for who); the follow-up of the recommendations (agencies and frameworks) and, the relevance of truth commissions in making recommendations for victims' reparations.

The research describes the different contexts for the inclusion of reparations within truth commissions and strategies for their implementation, and to this end, it proposes a model for studying the follow-up of recommendations on reparations made by truth commissions.

Abstract

In de loop der jaren zijn waarheidscommissies een aantrekkelijk instrument geworden om schendingen van de mensenrechten op grote schaal, aan te pakken. Eén van de redenen hiervoor is dat ze meer kansen creëren om om te gaan met de vele tinten grijs die de meeste conflicten karakteriseren. Het mandaat is ook geëvolueerd tot ver buiten de vaststelling van de waarheid. Het is nu een normaliteit geworden voor waarheidscommissies om aan de slachtoffers maatregelen of herstelprogramma's voor te stellen als een onderdeel van hun aanbevelingen. Maar toch, als we in gedachten houden dat waarheidscommissies slechts tijdelijke instellingen met een beperkt tijds kader en mandaat zijn, moeten we ons de vraag stellen wat de toekomst is van de aanbevelingen in de rapporten. Om deze situatie nog verder samen te vatten: niet zelden heerst er een sterk verminderde interesse in het onderwerp dat wordt aangesneden in de post-waarheidscommissie fase.

Het doel van dit onderzoek is de aanbevelingen te bestuderen die verband houden met de herstelmaatregelen die de waarheidscommissies hebben voorgesteld. Het is een onderzoek naar de reacties van de verschillende belanghebbenden op de aanbevelingen en de kaders die al dan niet geïmplementeerd werden om specifieke aanbevelingen op te volgen en uit te voeren.

Twee gevalstudies werden geselecteerd: Sierra Leone's Waarheids- en Verzoeningscommissie en Ghana's Nationale Verzoeningscommissie. Hoewel deze twee commissies allebei herstelmaatregelen voor de slachtoffers aanbevelen, werden verschillende benaderingen voor de opvolging ingesteld, zowel in de rapporten als tijdens de post-waarheidscommissie fase. Hoe houdt dit verband met de werkelijkheid ter plaatse als het op herstellingen voor de slachtoffers aankomt? Dit onderzoek richt zich op vier grote onderwerpen binnen de waarheidscommissies en de herstellingen: de inclusie of omissie van herstelmaatregelen binnen het mandaat van de waarheidscommissies; de inhoud van de aanbevelingen (welk herstel, voor wie en naar wie?); de opvolging van de aanbevelingen (instellingen en kader); en de relevantie van waarheidscommissies in de vaststelling van aanbevelingen voor het herstel van slachtoffers.

Het onderzoek beschrijft de verschillende contexten voor de inclusie van herstelmaatregelen binnen waarheidscommissies en de strategieën voor hun implementatie. Hiertoe stelt het een model voor om de opvolging van de aanbevelingen voor herstelmaatregelen door waarheidscommissies te bestuderen.

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LIST OF ABBREVIATIONS

AFRC	-	Armed Forces Revolutionary Council
APC	-	All People's Congress
AWAFF	-	Aberdeen West Africa Fistula Foundation
AWWA	-	Amputees and War Wounded Association
CDD	-	Centre for Democratic Development
CDF	-	Civil Defence Force
CONADEP	-	National Commission on the Disappearance of Persons
CPP	-	Convention People's Party
CSO	-	Civil Society Organisation
DDR	-	Disarmament, Demobilization and Reintegration
DFID	-	Department for International Development
ECOMOG	-	Economic Community of West African States Monitoring Group
ECOWAS	-	Economic Community of West African States
EDA	-	Economic Development Administrative programme
EO	-	Executive Outcomes
HRCSL	-	Human Rights Commission of Sierra Leone
ICTJ	-	International Centre for Transitional Justice
NaCSA	-	National Commission for Social Action
NDC	-	National Democratic Congress
NGO	-	Non Governmental Organisation
NLM	-	National Liberation Movement
NPP	-	New Patriotic Party
NPRC	-	National Provisional Ruling Council
NRC	-	National Reconciliation Commission
OAU	-	Organisation of African Unity
OSIWA	-	Open Society Institute for West Africa
RJ	-	Restorative Justice
RUF	-	Revolutionary United Front
SCSL	-	Special Court of Sierra Leone
SLA	-	the Sierra Leone Army
SLPP	-	Sierra Leone People's Party
SLRRP	-	Sierra Leonean Rural Reintegration Project
SLV	-	Sierra Leone Venner (Friends of Sierra Leone)
TJ	-	Transitional Justice
TRC	-	Truth and Reconciliation Commission

UN	-	United Nations
UNAMSIL	-	United Nations Mission in Sierra Leone
UNDP	-	United Nations Development Programme
UGCC	-	United Gold Coast Convention
UNIFEM	-	United Nations Development Fund for Women
UNIOSIL	-	United Nations Integrated Office in Sierra Leone
UNOCHA	-	United Nations Office for the Coordination of Humanitarian Affairs
UNPBF	-	United Nations Peacebuilding Fund
USIP	-	United States Institute of Peace
WAMP	-	West African Museum Programme

*"If I receive it [reparation], I will thank God.
If I don't, I will put my complain to God.
Because I suffered, why should I not get the benefit?"*
(Other war wounded victim, Free Town)

GENERAL INTRODUCTION

Societies emerging from genocide, civil war or authoritarian regimes are often faced with complex relationships and compromised institutions. One of the priorities of the new regimes is how to deal with the history of violations and transition into more stable and democratic states. Transitions can be delicate and fragile processes and whether societies are emerging from a war or repressive regime, one of the fundamental concerns is how the needs of the different actors are adequately accommodated (Posner & Vermeule, 2003). This is a process involving bargains, compromises and concessions. The outcomes of these processes are not only significant in the immediate aftermath of the transition but continue to remain relevant long after the actual process.

The concept of Transitional Justice (TJ) emerged from the 1980s as a body of theory and practice to explain and understand how societies deal with the past atrocities. According to the International Centre for Transitional Justice (ICTJ) both judicial and non-judicial mechanisms have typically been implemented. These include; truth seeking, reparation, criminal prosecution and institutional reforms (International Centre for Transitional Justice, n.d.). This study focuses on two of these mechanisms, truth seeking through the practice of truth commissions and reparations through the recommendations made by the truth commissions.

The study explores the linkages between the two mechanisms by analysing what happens to the recommendations on reparations made by the truth commissions following the end of the truth commission process. It explores the issues of compliance and/or noncompliance and the interactions of the different stakeholders involved in the design and implementation of the reparation programmes.

The recommendations on reparation originating from truth commissions are presumed to reflect the perceptions of the victims. Truth commissions further maintain a strong claim to tailoring the recommendations as closely as possible to the needs of the victims. Additionally, many of the recommendations are a result of extensive consultation and are therefore framed with the expectation that they will be easily and quickly implemented. However, the implementation record of various truth commissions' recommendations on reparations presents a different story.

One subject that remains largely uncharted in TJ in general and more specific to truth commissions is the implementation of the recommendations, notably, what happens to the grand designs orchestrated through these processes? It is an all too common scenario in virtually all post conflict countries. There is significant interest in the periods during and after a transition. There is often an outpouring of expatriates, academicians, researchers, NGO workers, among others and a mushrooming of local and international NGOs. TJ as a practice however is not an indefinite process and its mechanisms and practitioners have time lines. They may set the ball rolling for further development and reconstruction processes but as individual mechanisms, time comes and they end. There are certain exceptions which have evolved into permanent structures such as the Rwanda National Unity and Reconciliation Commission which became a permanent body, and the Special Court for Sierra Leone which is now the Residual Special Court for Sierra Leone following the closure of the Special Court in 2013. Despite their continuity, the role and interest of the newer institutions also evolved from the frameworks for which they were initially established.

Newer conflicts are continually emerging causing the interest to shift to the newer challenges. In the rush to catch the next big thing in conflict, there is a relegation of the processes that were started in the former conflict areas, an aspect that has resulted into less systematic follow up studies.

This study therefore contributes to the TJ field by building on the debates on the interconnectedness of TJ processes. It focuses on the post-truth commission phase by following up on the processes and status of the recommendations on reparations made by truth commissions. The central question of the study is *“what happens to the recommendations on reparations made by truth commissions after the completion of the commission?”* This is broken down into six sub-questions:

- a. *To what extent did the question of reparation feature in the discussions on Transitional Justice measures?*
- b. *What do truth commissions mean when they refer to reparations?*
- c. *What are the determinants for the inclusion or non-inclusion of follow up frameworks?*
- d. *To what degree have the proposals on reparation been implemented?*
- e. *To what extent can the understanding of truth and reparations within criminology be applied to truth commissions and reparation programmes?*

f. To what extent can implementation studies contribute to the study of implementation in TJ?

Using the cases of Sierra Leone Truth and Reconciliation Commission and Ghana National Reconciliation Commission, it examines the issues of compliance and/or noncompliance and the responses of the different stakeholders to the recommendations on reparation.

A qualitative approach that involved in-depth interviews with purposely selected respondents was undertaken. Through this analysis, the study develops a framework that could be used to study how the recommendations on reparations made by truth commissions are implemented.

This dissertation is divided into five parts and twelve chapters. Part I presents the general setting of the study. Chapter 1 explains the background to the research and addresses the methodological choices of the study.

Part II explores the theoretical constructions. In Chapter 2, a general TJ framework is presented which is eventually narrowed down to the two mechanisms of truth commissions and reparations and how these have been linked through truth commissions including reparations as part of their recommendations.

Chapter 3 deals with how the implementation of truth commission recommendations on reparation has been addressed in existing TJ literature. The study in general identifies two angles which have been discussed. The first angle identifies a set of criteria that needs to be considered when designing reparation programmes (de Greiff, 2006b; Magarrell, 2007; Roht-Arriaza, 2004). The assumption is that such criteria will result in a more comprehensive programme. The second angle identifies elements that impact the implementation of reparation programmes. The focus of these studies has mainly been on identifying and proposing strategies to maximise the possibility of the implementation process happening. In response to these approaches, the study proposes a third approach to studying implementation. It calls for an integrated approach that views implementation not as an isolated activity but as a process that takes into account the totality of experiences from design to output. It therefore discusses elements in the pre-truth commission, during truth commission and post-truth commission that contribute to compliance and/or non-compliance to the recommendations on reparation.

In Chapter 4, the study examines the linkage between TJ and criminology. Despite the cross cutting theme of 'crime', criminology has not made significant strides in addressing international crimes while a number of TJ scholarship does not recognise the criminological orientation. This chapter therefore explores issues such as the position of international crimes in the field of criminology and how it is conceptualised and explained. It draws on the argument that criminology has specialised on understanding crime and is therefore relevant in offering this specialised knowledge in the field of TJ and international crimes (Parmentier, 2011). It however limits the exploration to the concepts of truth and reparation and how these have been understood and utilised within criminology and the significance it presents to TJ.

Part III presents the case studies. It offers a historical background of TJ in each case and shows that despite making use of a similar mechanism, the context and processes that led to the adoption of the TJ and reparation programme vary significantly. The trajectory of each case also had an impact on the post-truth commission phase. Chapter 5 considers the case of Ghana whereas the Sierra Leone case is discussed in chapter 6. Chapter 7 synthesises the two cases by applying the proposed integrated approach to studying implementation of the TRC recommendations on reparation. It however argues that focusing on the secondary literature results in a number of limitations particularly on the diverse interpretations from different stakeholders. Both cases have also had a limited examination of the post-truth commission implementation of the recommendations on reparations and as such detailed literature on the process and status of reparation is lacking.

In Part IV, the results of the empirical study is presented. It analyses the responses of the different actors around the issue of the truth commission, reparations and the implementation of the reparations. Chapter 8 focuses on Ghana and the Ghana National Reconciliation Commission whereas chapter 9 discusses Sierra Leone and the Sierra Leone Truth and Reconciliation Commission. Chapter 10 compares the cases by presenting the salient issues observed from the field while linking them to the proposed integrated approach for studying implementation.

Part V focuses on implementation studies. In Chapter 11, a general discussion on implementation is conducted through which the context in which to place the study of the implementation of truth commission recommendations on reparation is identified. Chapter 12 elaborates the proposed framework for studying the implementation of

truth commission recommendation on reparations. It identifies and discusses the variables pertinent to studying implementation using the integrated framework by referencing to the truth commission cases of Ghana and Sierra Leone.

The last part consists of the conclusions and general recommendations. In the conclusions, the general significance of the study is reiterated. It also presents a summary of the key issues identified in each chapter.

The recommendations contains five proposals;

First, more scholarly and practitioner focus on post-truth commission programmes concerning reparation. This could be facilitated by directing funds and grants for research to institutions to specialise on following up the processes set up by the commissions.

Second, longitudinal studies of truth commissions that take into account the before, during and after processes would provide a more comprehensive understanding of the dynamics of the mechanism and therefore the implementation of the recommendations.

Third, a long term approach to the mechanism of truth commissions. This could be achieved by recognising and encouraging local capacity, ownership and direction of the process. Truth commissions need to be locally driven in a bottom-up process with the local actors actively defining the process.

Fourth, an empirical application of the proposed framework for studying truth commissions. The framework in the study was developed after identifying the gaps in TJ and implementation studies literature following both the literature review and field work. It also focuses on only two cases. It would be beneficial to test its applicability to other cases as well.

Fifth, integrate a victim-centred implementation process that addresses the nuances of victims groups and needs. Such a process should involve victims as active participants.

PART I. SETTING OF THE STUDY

"Da mi sista wae na trenja"
(Female, Freetown)

CHAPTER 1. BACKGROUND AND METHODS

1.0 Introduction

This chapter presents the general setting of the study. It first introduces the research topic by discussing the background to the research and thereafter discusses the methodological deliberations undertaken. It aims to explain how specific decisions in the study were reached at. The strategic choices in selecting an appropriate research design are not only critical for establishing focus but also for ensuring quality of the research. Silverman (2005), Punch (1998) and Palys & Atchison (2008) argue that the choices of which method to employ largely depends on what the researcher is trying to investigate. It is therefore essential to adequately prepare prior to immersing oneself in the data that could potentially emerge.

1.1 Background to the research

Since the first truth commissions in the 1970s and 1980s, they have grown in popularity as a TJ mechanism and subject of scholarly research. One area to which limited attention has however been paid is the post-truth commission phase, specifically empirical research into the follow up and implementation of their recommendations. Nevertheless, reference has over time been made to the issue of implementations. As discussed below, this is usually in the context of emphasising the need to carry out implementation of the recommendations of truth commissions.

In 1996, Hayner raised the issue of the continuity of the work of truth commissions once they have completed their mandate in two publications. In the first one, she argues that truth commissions should include “the power to make recommendations” in their mandates which “can be expected to be given serious consideration.” She further briefly raises the issue of “follow-up activities or policies [that can] put a truth commission report to best use and contribute to reconciliation” (Hayner, 1996a, p. 25). She argues that the implementation of the recommendations could contribute to a reconciliation process but often the recommendations are viewed as “optional” and not carried out (p. 28).

In the second publication, Hayner (1996b) proposes a set of guidelines for the establishment of truth commissions in which she details a set of minimal requirements

for their operation. On the issue of the implementation of the recommendations, she argues that “While there might be no prior commitment to implement the recommendation of a commission, there should be good faith that the government, and the opposition, where relevant, will give serious consideration to its recommendations and give credence to its findings” (p. 180). Granted that this is a preliminary guideline, the mention of implementation is very brief and the future of the implementation is painted as uncertain where a commitment to implement is dependent on the “good faith” of the relevant stakeholders.

The UN in 2006 released a report on rule of law tools for post conflict states focusing on truth commissions. They accurately point out that once a truth commission has been formally dissolved, the relevant bodies face an uphill task of implementing the recommendations. Implementation success however is reliant on a number of political, social and economic factors and requires a carefully thought through follow up and implementation structure including effectively lobbying the government to ensure that such a structure is set up (United Nations, 2006c). The emphasis for this report however lies in how to guarantee that the next step of implementation is taken up by relevant bodies. Likewise, in 2013, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence reiterated the challenges faced in the implementation of truth commission recommendations and highlighted how to strengthen the truth commission mechanism to address human rights violations (United Nations, 2013).

The Amnesty report on establishing an effective truth commission contains a chapter on building the future of truth commissions. In it, they argue for the publication and dissemination of the report, making recommendations on prosecutions and reparations and designating a successor body to “monitor the implementations ... continue investigations [and] preserve the archives” (Amnesty International, 2007b, p. 40). However, as with the previous publications, there is an emphasis on the importance of implementation of the recommendations but no detailed analysis of how this has been done.

In later publications, although the monitoring of implementation aspect is addressed, this is limited to pointing out that a rigorous approach to monitoring the performance of relevant stakeholders in implementing the report needs to be adopted (Hayner, 2011; González & Varney, 2013; González, 2013). However, there is no framework or

empirical research for studying how these stakeholders are observing their responsibilities

Despite many of these publications emphasising that states and other stakeholders “disseminate, implement, and monitor implementation of the recommendations of non-judicial mechanisms such as truth and reconciliation commission” (UN Commission on Human Rights, 2005: Para 3), there is limited systematic study following up the compliance to the recommendations.

This study draws on this limitation to focus on the post-truth commission period, specifically in investigating the dynamics of the implementation of its recommendations on reparation. It does so by analysing the reports of specific truth commissions and the ways in which the objectives outlined in the reports are either realised or not. Through this analysis, a framework for studying the implementation of truth commission recommendations and the responses of the different stakeholders is developed.

1.2 Research questions

The central question this study aims to explore is ***“what happens to the recommendations on reparations made by truth commissions after the completion of the commission?”*** When proposing recommendations, it is expected that the recommendations will be implemented within a reasonable time-frame. This is even more critical when the well-being of a section of the population is looking to benefit from the said recommendations.

Truth commissions, particularly after the South African experience in which public testimonies were carried out have tended to be more public, attracting international and local attention. The centralisation of victims in the discussion heightens the perception that the whole process is geared towards attempting to redress the wrongs victims have suffered. It is therefore expected that after the process, victims and victims needs articulated in the report will be addressed in a timely and appropriate way.

In reality, often the fanfare that accompanies the truth commissions drastically reduces following the end of the truth commission process. In general, truth commissions

operate for a specific time period and do not have the mandate to implement their recommendations. They are limited to sometimes only making recommendations on the frameworks and institutional arrangements for the implementation of their recommendations. A recent development however is the on-going Tunisia Truth and Dignity Commission which has been mandated with implementing its recommendations on reparations (Amnesty International, 2016).

There have been a number of studies that have focused on the various variables that could impact on the implementation however a detailed study into the frameworks, whether recommended by the truth commissions themselves or instituted following their completion has so far been missing. An in-depth analysis of the interaction of the various agencies in setting up these frameworks and how they attempt to transform the recommendations into action could be significant within the Transitional Justice field. This is particularly significant because implementation is overwhelmingly complex and Transitional Justice has so far not readily engaged with it.

This study approaches the central question from two angles. The first angle focuses on truth commissions and how they have addressed the question of reparation and its implementation. The second approach extends the scope beyond Transitional Justice to explore how other fields have addressed the key concepts in this study, truth (commissions), reparations and implementation.

In the first approach of exploring how truth commissions have dealt with issues of reparation and its implementations, four main areas are highlighted.

(1) First, the circumstances under which the truth commission mechanism was preferred as a Transitional Justice tool and the rationale for including reparation for victims in the final report. There are various factors that determine the selection of an appropriate Transitional Justice mechanism for a particular country (United States Institute of Peace, 2008) and these have repercussions on the outcome of the selected mechanism (Posner & Vermeule, 2003). Colvin (2006) for instance, in analysing the reparation programme in South Africa argues that whereas reparations was an important component of the transition, the discussion and negotiations around it remained minimal and it was never dealt with intensively or extensively. This, he argues partly explains the tepid responses to its implementation. I therefore explore the discussions around reparation and how these were framed during the

establishment and operationalisation of the commissions. These concerns are guided by the following sub-question:

- a. *To what extent did the question of reparation feature in the discussions on TJ measures?*

(2) Second, the study addresses the meaning of reparation from the perspective of the truth commissions. What do truth commissions mean by reparations and how do they frame these recommendations. Reparations can be defined either broadly or narrowly and these have consequences in the design and implementation of the programmes (Cammack, 2006). This study therefore explores whether truth commissions differentiate between the broad or narrow approaches and how they frame the discussion on reparation for instance in terms of the specific benefits and to whom. The following sub-question contributes to this discussion.

- b. *What do truth commissions mean when they refer to reparations?*

(3) Third, the study explores the frameworks for following up the recommendations on reparations when the truth commissions have ended. In some cases, truth commissions propose specific frameworks that could be used in the implementation process specifying the details such as responsible parties, institutions and resource options. In other cases however, no frameworks or follow up procedures are proposed and it is up to the body at which the recommendations are directed, usually the government to institute a follow up and implementation process. This study therefore examines the processes following the submission of the report. Below is the guiding sub-question.

- c. *What are the determinants for the inclusion or non-inclusion of follow up frameworks?*

(4) Forth, the study compares the actual implementation that has taken place against the objectives set out in the recommendations. By documenting what has been done and what has not been done, it further explores the reasons behind the status of the implementation. This discussion is also broadened to include the impact of (non)implementation on victims as well as general perceptions of how a reparation programme would be considered to have been successfully implemented. Below is the sub questions.

- d. *To what degree have the proposals on reparation been implemented?*

In the second angle, the study broadens its scope to explore how the concepts of truth, reparation and implementation have been addressed in other fields. Two main fields are considered.

(1) First, the study links criminology and transitional justice by exploring how the concepts of truth, reparations and truth commissions are addressed within criminology. Taking into consideration how little either field has interacted with the other, it seeks to contribute to the existing knowledge by exploring how the theories of truth and reparation within criminology can be applied within a transitional justice framework. Below is the sub question.

e. To what extent can the understanding of truth and reparations within criminology be applied to truth commissions and reparation programmes?

(2) Secondly, the study explores the field of implementation studies. It first examines how TJ has approached post-truth commissions with a focus on the implementation of its recommendations on reparations. Drawing on the limited attention that has been given to this area in TJ it explores the understanding of implementation from the perspective of implementation studies seeking out the variables developed to study implementation. Below is the sub question.

f. To what extent can implementation studies contribute to the study of implementation in TJ?

By exploring these questions, the research aims to contribute towards the study of truth commissions' recommendations with a specific focus on reparations policies for victims hence contributing to both theory and practice. In so doing, I examine the current functioning of truth commissions, the frameworks for following up the recommendations on reparations and propose a model for studying the follow-up frameworks.

1.3 Research Design

The method selected for carrying out this study was a qualitative approach. At the heart of this study is exploring the state of the field. This is done through; seeking out what the practice is in transitional justice for studying post-truth commission recommendations, empirically explore how the recommendations are translated into

action and from these develop a framework for studying post-truth commission recommendations.

According to Bryman (2008), qualitative investigations yield more informative, richer and enhanced interpretations because of the way data is collected and analysed. This is especially so when complex issues are being studied that require an in-depth analysis of experiences. In this case, this study takes place at least five years after the commissions were ended. There is diminished interest in the issue, a limited number of respondents and a possibility that the topic may still be a sensitive issue particularly to victims. The choice for a qualitative approach was mainly based on four justifications.

In the first instance, as argued by Noaks & Wincup (2004) data generated from qualitative research can inform the policy development process. It may be used to evaluate existing policy, as an instrument to generate ideas for policy development or take the form of action research. Such an approach seeks to “enhance contextualized understanding for stakeholders closest to the programme” (p. 16).” Palys & Atchison (2008, p. 7) argue that “humans are cognitive beings who actively process and make sense of the world around them, have the capacity to abstract from their experience, ascribe meaning to their behaviour and the world around them, and are affected by those meanings. Drawing on this observation, I sought to gain a deeper understanding of how the different agencies interact in the process of implementing the recommendations on reparations. The study focused not only on the individual but also the social structures and institutional interactions. It aimed at embracing an approach that would allow me to probe deeper into perceptions of why and how the phenomenon is the way it is. I therefore inquired into the opinion of different actors regarding what is happening in the implementation process, why it is happening the way it is and how it could be improved. The policy implication of this study is its potential to contribute to the theory and practice of how implementation programmes can be carried out and studied.

Secondly, qualitative approaches place primary value on comprehensive understanding of people and experiences and can afford to accommodate the dynamics of social structures. This human-centred approach (Palys & Atchison, 2008) allows the researcher to view human beings and agencies as “thinking and motivated actors” (p. 7) and capture what they perceive as important and significant (Bryman, 2008). This research was therefore structured in such a way as to let respondents explain from

their own perspective about their experiences. I posed questions that sought to let the respondent locate their position in whole framework of truth commissions and reparation and thus explain their behaviour and motivations among others.

Third, one of the qualities emphasized by Tewksbury (2009), that drew me to this approach is that qualitative research mimics everyday life. He further argues that the approaches to qualitative research “look and sound a great deal like what we do in regular daily life” (p. 43). For respondents such as the ones I intended to interact with, who have experienced research as participants from a number of sources, research can tend towards a tedious and non-beneficial endeavour for them. I anticipated they might be weary of yet another researcher. I therefore preferred a method which could seek them out and accommodate them in their ‘natural’ setting as much as possible. I wanted the interviews to follow as much a conversational pattern as possible by using open ended questions and letting them tell their story. I also assumed that there might be a possibility that some of the respondents might be either unwilling or unable to read and write hence responding unenthusiastically to paperwork involving surveys. I therefore sought to minimise the paperwork which might be intimidating for some of the respondents, especially the less literate or put off some who might not think they have the time to fill out a form.

Fourth, qualitative research emphasises processes (Palys & Atchison, 2008) and particularly, the processes by which perceptions are constructed and evolve (Bryman, 2008). Following an initial literature review, what was already established was that the outcome of reparation programmes following truth commissions was little to no implementation. In addition to this, there is an acute shortage of detailed empirical studies on the processes. This study focused on attempting to understand the processes and the interaction between the different actors in the implementation process.

1.4 Data collection

The data collection process was carried out in two parts. The first part involved a literature review and analysis of specific reports and documents while the second part involved an empirical study in the selected cases, Sierra Leone and Ghana (*See 1.4.2.1 for the case study selection*).

1.4.1 Literature review and analysis of documents

In the literature review, a general overview of transitional justice literature was carried out which clarified the definitional contexts and set the background from which this study was carried out. It also explored literature in criminology and implementation studies.

A number of sources was used to access the literature, mainly through the KU Leuven Library data base. While in the field, I also visited and had access to the local university libraries, that is, Fourah Bay College (University of Sierra Leone) library and University of Ghana, Legon Centre for International Affairs and Diplomacy library. I also had access to the libraries of two NGOs, Centre for Democratic Development (Ghana) and Centre for Accountability and Rule of Law (Sierra Leone). Both were key players during the truth commission process in the respective countries. Online search engines were particularly useful in giving a broad overview of publications, institutions and organisations covering the issues I was searching on.

An equally important task was accessing the reports of the respective truth commissions. Initially, these were downloaded from online sources. While in the field, I made an effort to acquire a hard copy of the reports. In Sierra Leone, through the United Nations Integrated Peace building Office in Sierra Leone (UNIPSIL), I obtained the Sierra Leone Truth and Reconciliation report, a CD version of the report and a music CD of the recommendations. In Ghana, the hard copies were not readily available and a copy could only be consulted at the University of Ghana Library and the Auditor General's office.

1.4.2 Empirical study

The empirical study was carried out in Sierra Leone and Ghana where interviews were carried out with key respondents. In the literature review, I was not able to find detailed information, particularly on the implementation of the post-truth commission recommendations on reparation. It was also difficult to know exactly what had been implemented or not implemented, or the decisions that had informed specific actions by relying only on the literature because the information was not available. I therefore focused on exploring what had been done, how it had been done, whether that was what was expected and explain why it had happened the way it had (Werner, 2004).

The insights from the study were foreseen to be useful in proposing a framework for studying implementation by drawing on pertinent variables identified from the cases (Palys & Atchison, 2008) and linking them to the approaches identified in the literature.

In the following sections, I elaborate on the methods I used for the selection of the case studies and participants in the interviews.

1.4.2.1 Case study selection

Since 1974 when the first truth commission was created, over forty commissions have been set up in different parts of the globe. There however is still an ongoing debate among some scholars on the specific criteria for characterising truth commissions which has led to the variation in the number of truth commissions that have so far been established (Dancy, Kim, & Wiebelhaus-Brahm, 2010; Freeman, 2006; Hayner, 2002, 2011; Olsen, Payne, & Reiter, 2010b; United States Institute of Peace, n.d.-b; Wiebelhaus-Brahm, 2009). Whereas it would be interesting to have a detailed empirical analysis of all of them, it would be difficult to carry out within the scope of this study. For a detailed exploration, I therefore identified two cases (Silverman 2005; Bryman, 2008; Davies, Francis, & Jupp, 2011). These were purposefully selected (Bryman, 2008). A key consideration that informed the selection was the practical aspects of getting to the field and accessing information. This included among others the available funds and relevant documentation such as the report, logistical considerations in terms of transportation and the working language in the country as described below.

First, in the selection of the specific cases to focus on, I surveyed the United States Institute of Peace (USIP) database accessed in 2009 which had a more extensive data on the cases (United States Institute of Peace, n.d.-b). I identified six types of transition preceding the establishment of a truth commission: 1) Transition from a repressive regime; 2) Electoral or post-electoral violence; 3) Civil war; 4) Political violence; 5) Genocide; 6) Apartheid. Two types of transitions, transitions from repressive regimes and civil war and two continents, Africa and South America stood out. Whereas both continents would serve as interesting cases, I selected to focus on the African continent mainly due to consideration regarding language. A number of the truth commission reports in the South American countries are in Spanish as is the local language of communication which I do not comprehend.

Secondly, I considered the content of the recommendations. From the USIP database I observed that whereas a number of truth commissions explicitly proposed recommendations for victims' reparation, some did not. For this study, it was essential that the selected cases suggested recommendations relating to victim reparations. Those that did not recommend reparation were eliminated.

Third, the truth commissions would need to meet the basic characteristics of truth commissions and a consensus from the different scholars on whether they qualify as truth commissions. In the first instance, I used Hayner's (2002, 2011) criteria of truth commission characteristics. Despite the on-going debate on truth commissions, she is still considered the most authoritative source. She identifies five definitive characteristics for truth seeking bodies to be identified as truth commissions (1) focusing on the past; (2) investigating a pattern of abuse over a period of time; (3) temporary body at the end of which a report is submitted, (4) officially sanctioned or empowered by the state and (5) engages directly with the affected population. In the second instance, by referring to other databases such as Wiebelhaus-Brahm's (2009), United States Institute of Peace (n.d.-b) and Dancy et al. (2010), I opted for truth commissions in which there was consensus as to whether they met the parameters of a truth commission.

Forth, I considered the time period that had elapsed after the closure of the truth commission. Ideally, there should be adequate time to allow the governments to set up mechanisms for the implementation of recommendations and short enough that the issues are still pertinent. Mazmanian & Sabatier (1989) for instance argue that the time span for implementation analysis is at least seven to ten years. This period gives, "adequate time to correct any deficiencies in the legal framework, tests the ability to develop and maintain political support over a sufficient period of time to actually be able to bring about important behavioural or systematic changes, gives time to the political system to decide if its goals are worth pursuing" (p. 42). Although their assessment is made from a framework of statutory policies where there is an impetus on government to follow up and implement the policies the same logic can be applied to truth commissions. I therefore opted for truth commissions that had ended at least six years before the study.

Fifth, in some cases, truth commissions may or may not propose an implementation framework in their recommendations. By selecting both experiences, it could provide

an interesting study of the economic, social and political factors that explain the compliance or non-compliance with the recommendations on reparations.

It was also important that the selected cases are easily accessible. This included factors such as language (English speaking), geographical location and accessibility of data. It was pragmatic to consider countries nearer to each other to minimise costs of travel. Additionally, the data relating to the truth commission such as the report, Acts and Agreements had to be publicly available. I also verified that the report, in addition to being released was published and publicly disseminated.

Based on the above considerations, the Sierra Leone Truth and Reconciliation Commission (2002-2004) was selected as a case that detailed follow-up strategies and in contrast, the Ghana National Reconciliation Commission (2003-2004) as a case where recommendations were made but no strategies discussed by the commission for the follow-up. A key consideration to selecting Ghana was also of the fact that it has had considerably little focus by researchers.

1.4.2.2 Participant Selection

As with the cases, respondents were also purposefully selected (Bryman, 2008) so as to get nuanced perspectives. A key aspect in their selection was their knowledgeable ability and experience in being involved with the truth commission and the follow up process.

A number of individuals and institutions were closely involved before and during the commissions but were however not involved in what was happening after the submission of the report. In a number of cases, respondents expressed that they were not aware of the status of the implementation or had not kept up to date with what was happening after the end of the truth commission. In these cases, the discussion focused basically on the commission itself and the interviews were terminated. This therefore presented a relatively small pool of respondents to draw from.

In order to appreciate the different aspects to the implementation process from the initial setting of the goals to the actual translation into benefits, I identified a number of categories of respondents who I considered would give diverse opinions on the subject. They included, the former staff of the truth commissions, government officials,

individuals from the reparation programmes, victims, offenders and civil society and Non-Governmental Organizations (NGO).

In both Sierra Leone and Ghana, the study was limited to Freetown and Accra respectively. This is because the main offices of the reparation programmes are located in these cities. In Sierra Leone, whereas NaCSA has district offices, the decisions and policies originate from the main office. In Ghana, subsidiary offices were never established but rather the staff from the reparation committee travelled around the country to implement the programme. Additionally, considering the difficulty in the logistics of travelling to another location, it was considered more pragmatic to remain in the centre given that I was able to access the relevant respondents.

1.4.3 Data Collection methods

According to Werner (2004, p. 6), researching implementation requires “first-hand accounts of program processes, experiences, opinions and results by the key stakeholders.” Stakeholders may include all the actors and individuals involved during the life of a programme such as “programme planners and developers, state agency managers, local office management and staff, service provider management and staff, state and local advocacy, public interest groups and clients.” He recommends collecting data at the source or on the ground “where programme activities happen and client outcomes are realised.” The information gathering strategies proposed in implementation research include: open ended interviews that “focus on the parts of the programme experiences most relevant to the informant being interviewed,” focus groups and participant observation.

Open ended face-to-face interviews were conducted with the selected respondents. Two categories of respondents were identified; the elite and non-elite. By elite respondents, I refer to respondents either in positions of power or influence. This included government officials, staff of the reparation programmes, members of NGOs and Academia. The interviews with elite respondents were carried out in their respective offices and a formal process of approaching was taken such as drafting and sending introduction letters, following up with phone calls and office visits in order to schedule an appointment.

The non-elite Interviews which comprised of the victims took place at a convenient location such as a restaurant, office of the AWWA (in the 2012 field visit to Sierra Leone when the amputees and other war wounded association had their office facilities) and in their homes in the Amputee camps. The interviews normally took between twenty minutes to one and a half hours depending on how much information they had or their willingness to share the information. A number of times though, some respondents were not knowledgeable about my area of focus concerning the implementation but out of politeness and respect, I continued with the interview and let them focus on areas they were keen on.

1.4.3.1 Gaining access

As a researcher in a culturally and geographically different location, a key challenge for me was gaining access which according to Noaks & Wincup (2004) may be to documents or possible respondents. According to them, gaining access is a key research phase “because the initial presentation will influence the ways in which potential research participants define the research” (p. 57). An approach to circumvent this is through negotiating access, a process that is of concern not only at the beginning but continued throughout the data collection (2004, pp. 55–72).

The initial step to negotiating access involves identifying gatekeepers (Broadhead & Rist, 1976; Noaks & Wincup, 2004; Silverman, 2010; Silverman & Marvasti, 2008). Gatekeepers may be drawn from existing social networks or identified from studying an organisational or institutional structure.

Pertaining to the research, accessibility was a central concern particularly because the selected cases were located in countries that I had never been to. I pursued two approaches.

In the first approach, I used existing acquaintanceship with individuals in the specific countries. I presented my research and intentions and requested their assistance in travel arrangements, identifying potential respondents and contacting respondents I had already identified. This informal approach was used because of the notion that potential respondents would respond to the researcher more positively if someone of the same nationality or social group introduced them. As argued by Noaks & Wincup (2004, p. 59), informal gatekeepers “vouch for the researcher” and “can use their status

and relationship with potential respondents to facilitate contact and trust between them and researcher.”

The second involved emailing potential respondent expressing my interest to interview them. I included an introduction letter and summary of the research. The approach of using acquaintances to facilitate the initial introduction yielded more positive results in comparison to sending emails to specific institutions and individuals.

However, as pointed out by Noaks & Wincup (2004), negotiation is a continuous process. Consequently, on arrival, the same requests for interviews were hand delivered to the various institutions. In some cases, particularly with NGOs, I was able to get the contact information of the individual who could process my request and direct me to the relevant respondent from the front desk. In other cases such as with the government institutions, I was required to wait at least one week before reporting back for more information. Between the delivery of the introduction and research summary letters, it took on average two weeks before securing an interview. With the academia, except in one case in Ghana, and most NGOs I contacted, I was usually granted an immediate audience if the relevant individual was present or at the very least within the week. In two cases, one in Ghana and one in Sierra Leone, despite continuous follow up both physically and through phone calls, I was not able to meet the relevant respondent.

Overall, I experienced a more positive response when I physically arrived in the field and was able to introduce myself, even after the informal introductions through acquaintances rather than trying to establish contact as an abstract researcher from far off. Physically showing up demonstrated the researcher’s commitment towards the research and motivated the respondents to respond positively.

It is worth pointing out that the above experience mainly pertained to the category I refer to as the elite respondents. It was a much simpler process with the non-elite such as the victim groups. In Sierra Leone, once I was able to access the contact of the victims group Chairperson, he acted as the gate-keeper and his acceptance of me as a researcher was interpreted as approval to participate in the research by the respondents. Participation by individual respondents however was still considered on a voluntary basis. The chairperson gave me the contact numbers of the camp chairpersons whom I informed about the research and the permission from the overall Chairperson. On arrival at the camp, I would first meet with the camp chairperson who

would then take me from home to home or assign another person to move around the camp with me. In Ghana, which had no victims' organisation groups, I inquired from respondents I had interviewed if they had acquaintances who had been a victim and if they could put me in touch with them. I also randomly posed the question to individuals I would interact with out of the research context. I would then request the individual to put me in touch with another person.

1.4.3.2 Interviews

The aim of the research was to explore how the different stakeholders had responded to the truth commission recommendations on reparation. I used semi-structured individual face-to-face interviews for two reasons; first, I was particularly interested in the respondents' point of view. As such, I focused on the respondents' perception and was able to get an explanation of the overall context of their opinion. Second, the interviews were arranged on an individual basis and for the elite respondents, these took place at their convenience, usually in their respective offices.

For the victims, in Sierra Leone, I was advised by one of my contacts who was taking me around in the camp to visit every home of the amputees. Even if they were not at home, I made sure to inform the occupants or neighbours that I had been there. The approach was to let each individual speak for themselves rather than as a group as some would feel left out. This would avoid creating tension and conflict among the group if they perceived any hint of supposed favouritism. I also sensed that a number of the victims preferred to communicate one on one, to talk about their experience because I found some of them waiting for me to reach their homes and they informed me that they had heard I was around and had been waiting for me. In Ghana, individual interviews were also conducted. The same procedure for elite interviews was followed as in Sierra Leone. For the victims however, accessibility was challenge due to their scarcity. I therefore relied on formal introduction and referrals.

1.4.4 Field visit

Two sets of field visits were conducted. I carried out joint visits where I went to one country and immediately flew out to the next one.

1.4.4.1 First field visit

The first joint field visit was carried out in Sierra Leone (Free Town) from 4 January – 29 January 2011 and Ghana (Accra) from 30 January – 25 February 2011. This initial visit was to seek out contacts with the key actors in the field. This was particularly relevant following insufficient feedback I got from the emails. During this trip, initial contact was established and a general sense of the context of the implementation process was observed. This was an exploratory visit to get acquainted with the facts on the ground.

Prior to the field visit, a tentative set of question themes was developed which was to be directed at the different stakeholders in relation to their role in the truth commission process. Through this visit, the pool of respondents was narrowed down significantly through sieving out individuals, institutions or organisations that were either not knowledgeable about the implementation of the reparation or were not involved at all although a number of them were selected precisely because they had been involved in the operation of the TCs. For the NGOs, I for instance inquired if their work with the victims is linked to the recommendations that the truth commission made regarding reparation or if they were in any way involved in following up of the recommendations. If their answer was in the negative, I generally asked them about their current programmes and views on the commission and the government response to the recommendations.

For the government ministries, in Sierra Leone, although the TRC made specific recommendations directed at particular line ministries, I established that none of the ministries had made any significant effort towards interpreting and integrating the specific recommendation in their programmes. In Ghana, after moving between Ministry of Interior, Ministry of Information, Ministry of Women & Children's Affairs, Ministry of Justice and Attorney General's Department, National Peace Council and Commission on Human Rights and Administrative Justice (CHRAJ), I established that the Reparation programme was under the Reparations Committee in the Attorney General's office.

In the first joint visit, twenty interviews were conducted. In Sierra Leone, twelve interviews were carried out. The respondents included individuals from: academia, NaCSA, Human Rights Commission of Sierra Leone, Civil society organisations, Victims the truth commission, Ministry of Finance and Development, and Relics Monuments

Commission. In Ghana, eight interviews were carried out. These included individuals from the academia, the truth commission, Reparations Committee and Civil society.

1.4.4.2 Second field visit

The second joint field visit was carried out in September – December 2012. This was divided into approximately two months in each country; Ghana, 1 September – 21 October 2012 and Sierra Leone, 22 October – 18 December 2012.

This visit aimed at building upon and consolidating the findings from the first field work. It sought broadly to inquire into ‘what has happened’, ‘why is it happening the way it is’ and ‘how should it have happened?’ Through this, the study would assess the implementation status and the response of the different stakeholders in the implementation process.

In order to ease access, it was considered prudent to identify an organisation that works closely on issues of reparations for victims in each of these countries and request to be hosted by them.

In Ghana (Accra), no such organisation was identified. All issues of reparations for victims following the NRC are handled by the Reparations Committee, under the Attorney General’s Office. I was not able to attach myself to the office. As an alternative, I contacted the Legon Centre for International Affairs and Diplomacy (LECIAD), University of Ghana whose facilities I was able to use.

In Sierra Leone, the Centre for Accountability and Rule of Law (CARL-SL) was identified as an organisation that has been keen on following up the issue of reparations for victims, although this is not one of its core activities. I was able to contact the Director who agreed to host me during the time I was in Sierra Leone.

I developed a standard interview guide which I could modify depending on the respondents. To ease the discussion, I had three modified questionnaires; for former commissioners, civil society and other stakeholders. The interview guide was divided into four categories:

1. Operations of the commission
2. Commission’s recommendations on reparations

3. Follow-up of recommendations on reparations
4. Implementation of recommendations on reparations

In this second joint field visit, I contacted the specific institutions I had identified as being involved with the reparation programme to request for interviews, first for a follow up discussion with the individuals I had already met but also requested to be referred to other members of the programme. I also followed up with the different respondents I had already met in the first visit to inquire about any updates on the programme and references to other key people I could meet.

In total, twenty five interviews were conducted. In Sierra Leone, seventeen interviews were carried out among; NaCSA, victims, civil society organisation and victims. In Ghana, eight interviews were recorded. These came from; a former NRC commissioner, government officials, Reparations Committee, victims and civil society organisations.

Two observations stand out from the field work experience. First, the post-truth commission processes in both countries with regard to reparations recommendations has been low key. Seven to eight years down the road, discussions and actions regarding reparation for victims has significantly reduced in public discourse. Second, because we sought to involve key respondents knowledgeable and who are actually actively involved in reparations, there was not a wide basket to draw from.

In both cases, data saturation was reached when I started being referred back to the same individuals and organisations by the different respondents. When it came to the technical information about what is actually happening regarding the reparation programme and why it is happening the way it is, there was a limited selection of potential respondents.

In Ghana, when I inquired if there was someone that they could recommend I speak to about the implementation of the reparation programme, I was constantly referred to Justice Crabbe in the Attorney Generals' Office and when I pointed out that I had already been to his office, then they would generally say along the lines of, 'then you have everything you need, he is the right person to talk to.'

Similarly, in Sierra Leone, I was referred back to NaCSA. When I insisted on an alternative name or organisation, although in some instances an alternative was given, I was still informed that NaCSA would be the best source of information.

In Sierra Leone, for the victims, I visited two amputee camps, Waterloo and Grafton and all of them repeated the same benefits that they had received. There was also a repetition of the impact of the delay in implementation of the full reparation programme on their lives. Despite the saturation, I could not simply terminate the interviews but I continued to interview all the amputees and war wounded who were present at the camp during the time of my visit and write down the names of those who were not present. This was to minimise conflict after my visit. However, in letting each individual tell their story, I was able to draw their perceptions regarding the programme beyond the generic responses as most of them were keen on expressing how the situation had affected their specific needs in terms of the future of their children, immediate livelihood needs or their potential capabilities.

For the other camps not visited, I called the camp chairpersons on phone and asked them general questions about the reparation programme and benefits members in their camp had received and their answers were similar to the individuals I had already interviewed and in this case, I did not physically go to the camp.

1.4.3 Research Dilemmas

This study sought to understand the different aspects of how to study truth commission recommendations with a specific focus on reparations policies for victims thereby contributing to both theory and practice. This would be achieved by exploring the theories in TJ and other fields, the current functioning of the truth commissions, and the frameworks for following up the recommendations on reparations.

I was however faced with two outstanding dilemmas which would invariably pose a challenge in our selection of an appropriate research strategy. The first dilemma relates to the desk research. The limited inclusion of the research topic in relevant fields implied that I had a minimal pool of publications to draw from. For instance, international crime and TJ has only minimally interacted with criminology. Most criminological research has dealt with more conventional crime and criminal justice hence when reading about research in criminology, references are made to such crimes.

Similarly, in linking TJ and implementation studies, whereas there is a lot of interest and scholarly publications prior to and during a TJ process in a specific case, this

interest somehow diminishes once the mechanism has been established. This is certainly the case for truth commissions and their recommendations.

A limited number of studies have been carried out in the selected cases. In Sierra Leone, an empirical study was carried out by the ICTJ in 2009 to review a one year project of building the institutional capacity to implement the TRC recommendations on reparations (Suma & Correa, 2009). Another study was published in 2014 and this however focused on the impact of non-implementation of the recommendations on reparation on amputees (Conteh & Berghs, 2014). Both are organisational reports. Other post TRC studies have mainly focused on perceptions towards the TRC and the significance of the TRC on goals such as healing, forgiveness reconciliation and reintegration (Kelsall, 2005; Shaw, 2005, 2007; Stovel, 2010; Millar, 2010, 2011, 2012, 2015). In Ghana, there has not been any study specifically related to the reparation programmes following the NRC although a number of studies have assessed the truth commission and its work (Alidu, Webb, & Fairbairn, 2009; Robert Kwame Ameh, 2006a, 2006b; Valji, 2006).

The second dilemma relates to the experiences in the field. As indicated by the quotation at the beginning of the chapter, I was often referred to as a '*trenja*', loosely translated as a stranger or guest. One of the implications for this was that it took longer to negotiate access. At least the first two weeks in each country were spent in trying to establish contact. Local introductions and references certainly helped thus my reliance on snowballing to establish contact.

In a number of cases, particularly in Ghana, I needed to prove my authenticity as a researcher and student before I was allowed access to some institutions. In addition to losing out on research time while getting acclimatised to the surroundings, I also questioned the depth of the data I collected and wondered if they had given me as much information as they would to a local researcher. I could also have overlooked key individuals by not being aware of the dynamic relationships in the field. On the other hand though, being a foreign researcher framed me as impartial which granted a degree of access and information.

Although English is widely spoken in both Freetown and Accra and the majority of my respondents were fluent in it, I also encountered cases where the respondents were unable to speak it with ease. This was particularly so with the interviews held with the victims. In this case, I relied on a translator.

Additionally, while interacting with the victims, I was conscious about asking sensitive questions which could potentially harm them emotionally. In the beginning, I tried not to ask about their disfigurements and focused on the reparation programme but during the course of the interview, they still explained how their injury occurred. I therefore adapted to asking them about their injury and give them the floor to talk about their injury and its impact on their lives.

A more pragmatic choice I had to make while in the field was on which categories of victims to focus on and whether to include the perpetrators in the research. For the latter case, the perpetrators are an invisible group, not necessarily willing to be identified as one. In Sierra Leone, a number of the perpetrators went through the reintegration programmes and for the case of the child combatants, have grown up. It was also not possible to access the top tier perpetrators. In Freetown, I only interacted with one male in his twenties who acknowledged that he was a former child combatant but he was emphatic on how it was a brief period and focused more on his stay as a refugee and his return to join the military. In Ghana, it was a different dynamic with the perpetrators acting within state authority and many of them either retaining positions of power or protected under the law. In both cases, I opted out of seeking out the former perpetrators due to the difficulty in accessing them.

For the case of the victims, in Ghana, I did not encounter any victims groups and the organisations that worked with them during the NRC did not keep up with that relationship. The victims were therefore scattered and difficult to come across except through being directly referred or being put in touch.

Sierra Leone's case however was a more systematic approach at selection of respondents given the wide range of reparation benefits and victims. The initial approach was to examine the implementation of all of the benefits against all of the categories of victims. However, given that the benefits had been sporadically awarded coupled with the fact that some victim groups such as children, war widows and victims of sexual violence were often difficult to identify and access, I considered two options. Either to select one benefit and examine how it has been implemented across the range of victims or select one group of victims and examine their interactions with the reparation programme and the benefits. Because of the difficulty in accessing the other categories of victims coupled with the limited reparation programme, I opted for the second approach of one victim group across the range of reparation benefits. The one

group that stood out was the amputees and war wounded who had an association, AWWA, and an organised structure countrywide. This of course limits the views of the other victims' categories but allows for the wider examination of the whole range of programmes given the time scope of the research.

According to Ballamingie & Johnson (2011, p. 726), "difficult research relationships that force a researcher to confront his/her own vulnerability while still engaging ethically with participants will undoubtedly render rich insights, complementing traditional textual analysis and literature reviews." These dilemmas, frustrating as they may be, served to strategise on both my role as a researcher and delineate the research. I was more confident going to the field the second time although issues of accessibility were still cumbersome. However, by the second visit, I was more comfortable with issues of protocol, directions, contacts and how to manoeuvre my way.

1.5 Data processing and analysis

Processing and analysing qualitative interviews can be a daunting process while trying to make sense of the voluminous data generated. As a researcher, how does one ensure that they are able to "understand [the respondents'] meaning and draw legitimate conclusions [and] how to grasp the essence of these data while protecting the integrity of each story when responding to the research question" (Dierckx de Casterlé, Gastmans, Bryon, & Denier, 2012, p. 361). Authors such as Tewksbury (2009) and Palys & Atchison (2008) propose an approach that includes identifying patterns, themes and clusters. Categorising similar people, events or processes can enable one to see connections (Palys & Atchison, 2008). Dierckx de Casterlé et al. (2012) have also discussed a more detailed step by step procedure in which they detail how to familiarise oneself with their data and deduce meaning that will enable them to answer their research questions. Drawing on these suggestions, I will describe below how I interacted with my data.

1.5.1 Transcription of interviews

I started by transcribing each interview. The interviews had been recorded using an audio recording device, except in two cases where the respondents preferred not to have the interview recorded. In this case, I wrote down the highlights of the interview and later filled in as much detail as possible regarding the interviews.

Although not verbatim, the transcriptions were meticulously done to include all that was spoken. In a number of cases, the interview environment was not conducive, for instance with a noisy background. Sometimes it was possible to control the noise, for instance, in a restaurant, I and the interviewee requested that the management turn down the volume of the music which they did. Other times though, it was impossible such as traffic noise that could be heard into the office. In this case, in addition to the recording, I wrote down the highlights and then endeavoured to transcribe as quickly as possible. For the interviews in which a translator was used, I only transcribed the English translations from the translator.

The transcribing also involved re-reading the interviews with the recorder playing and correcting errors. This was important because I found that I sometimes either missed or misunderstood certain phrases and words because of the different accents. This process also helped to familiarise myself with the data and reflect on it while picturing the general storyline. Through this process of reading and re-reading, I could link one interview to the other interviews and draw up preliminary general themes.

1.5.2 Grouping the data

Once the transcription was completed, I grouped my data into different categories. These were the different groups earlier identified as potential respondents. These included academia, reparation staff, government, civil society organisation, former TRC commissioner, victim and other stakeholders. Other stakeholders were members of the public whom I interviewed or informally discussed my research. In this case, I also sought for their permission on whether I could include relevant aspects of the discussion in my write-up.

The data was also broken down into themes relevant to the research questions. At the first level was the four categories of the interview guide, comprising of: (1) Operations of the commission (2) Commission's recommendations on reparations (3) Follow-up of recommendations on reparations (4) Implementation of recommendations on reparations.

At the second level, I identified the key issues that came up from each discussion regarding the different categories. For instance, in 'operations of the commission', I

inquired about what their perceptions were about the establishment of the commission, a number of the respondents in their answers justified or condemned the establishment of the commission which created the issue of 'necessity of the commission'. Similarly, several of the respondents included information in their discussion which I perceived to be relevant to the general topic of truth commissions and reparations and how they work and these were included in the theme of 'salient issues arising from the interviews' while others respondents were quite expressive on how they thought a reparation programme should be implemented, an issue which also got a category of its own.

At the third level was identifying the relevant phrases in each interview that could serve as supportive quotations regarding the themes and concepts. With the main themes and key issues identified, I re-read each interview and identified the quotes and grouped them accordingly. Important to this part was in endeavouring to understand the context in which the respondent made a certain statement and ascertain that what they meant in their statement is captured in a legitimate way in the overall story. This process of breaking down the interviews into themes and relevant concepts allows for the data to be filtered and clustered around the research questions (Dierckx de Casterlé et al., 2012).

The data processing and analysis involved a constant forward and backward movement through the data in order to familiarise with the data. This process included transcribing, reading and re-reading and re-listening to the interviews. It is through this that relevant concepts and themes are extracted which can then be tested and commonalities identified.

1.6 Research ethics and Quality Criteria

In the following section, I discuss the principles to ensure that the research was carried out in an ethically appropriate manner and to guarantee the quality of the research.

1.6.1 Research Ethics

A number of characteristics have been identified to regulate the ethical concerns of social research. Key principles include informed consent, confidentiality and anonymity, and risk and safety (Flick, 2006; Trochim, 2008; Wiles, 2013). This is due

to the awareness that social research is not risk free and there is need to deliberate about the impact of the research on both the participants and the researchers (Flick, 2006; Wiles, 2013). Below, I discuss concerns I was confronted with in the context of my research.

Informed consent

Before the interviews started, I explained what the research was about and that I was an academic researcher. This affiliation to academic research was particularly useful as it conveyed my impartiality. For some of the victims who expected to be remunerated after the research, they were made aware that they would not be paid for their participation. In fact, some of them even accepted to participate for this reason because they said they were tired of NGOs coming in to interview them and take their pictures while they do not receive any returns from it. Because of my different accent, I also made them aware that I was not from their country and this also painted me as a neutral party not affiliated to any political or ideological groups.

I also informed them that their participation was voluntary and they could opt out at any time during the interview. Consent was also sought before recording. In the instances where a guide/interpreter was involved, I explained to them the role of the guide or interpreter and inquired about which language they felt most comfortable communicating in. If it was in English, then I also asked the guide/interpreter to wait aside but if they needed an interpreter then they still had to consent to them being there. Participants did not receive any financial or material compensation for their participation. There were certain exceptions for instance if the respondent had to travel to where I was, then I refunded their transportation costs or if the interview took place in a restaurant, then I paid the bill.

Anonymity and confidentiality

The respondents were made aware that the information they had given would not be traced specifically to them and they would remain anonymous. Some of the respondents however mentioned that they did not mind having their names attributed to what they said. However, for uniformity in reporting, I used the general group reference unless the quote was very specific to the individual. I was also keen to emphasise that all information would be confidential and used for academic purposes only. This was critical for organisations and individuals giving unpublished reports or private information. Such information has also been anonymised where the participant gave their permission for its use.

Risk and safety

This involved submitting an application for a study period abroad to the university that would assess the security risk in the destination countries. Both Ghana and Sierra Leone were not considered high risk. The research topic was also not considered a sensitive issue in both countries and I did not anticipate any security concerns regarding me asking questions about them. However, common-sense precaution was taken to guarantee personal safety while in the field.

According to (Wiles, 2013) research can also pose a risk to the research participants. This could be emotionally or physically and adequate steps should be taken to ensure that the participant suffers minimal to no harm as a result of their participation. The study did not pose any danger to the participants and were all willing to participate in it. More so, since it was open ended where participants could tell their story, I reminded them that if they were not comfortable with certain aspects of their story they were not obliged to talk about it. I had some reservations about asking participants about their scars (for the amputees), however, they were comfortable about explaining how their amputation or scars occurred and also how it has impacted their lives. In only one case in Sierra Leone, one of the victims burst out crying. On calming down, he gave his consent to continue with the interview. The experience was disconcerting for me although his wife and a family member who joined in chided him for being drunk and dramatic in order to elicit sympathy from me. This breakdown however occurred when he was talking about being mocked by children along the road because of his amputation.

Wiles (2013) also include ethical dilemmas experienced by qualitative researchers in terms of treatment of participants in terms of “consent, anonymity, confidentiality, risk and role conflict” (p. 72). As explained above, the study did not involve any particular “ethical ‘horror stories’” (p. 80) although I was aware of the possibility considering the history of both countries where they have experienced a horrendous past.

1.6.2 Quality Criteria for Qualitative Research

The need to guarantee rigour and quality of a research is as relevant in qualitative research as it is in quantitative research (Bryman, 2008; Mays & Pope, 2000; Northcote, 2012; Silverman, 2010). The traditional criteria for ensuring quality in research have

included the concepts of validity and reliability. These concepts however cannot be used in a similar manner in qualitative research as they are used in quantitative research because of the different approaches to generating information as this could potentially limit the scope and flexibility of the collection and use of data, among others (Mays & Pope, 2000; Northcote, 2012; Trochim, 2008). As such, an “alternative criteria” for assessing the quality of qualitative research has been developed (Bryman, 2008; Lincoln & Guba, 1985). Nevertheless, according to Mays & Pope (2000) a basic strategy to ensure quality is applying a “systematic, self conscious research design, data collection, interpretation, and communication” (p. 52). In the following section, I discuss how I applied the alternative criteria as discussed by Bryman (2008, pp. 365–395) to guarantee the quality of my research.

1.6.2.1 Alternative criteria

Bryman (2008) identifies two criteria for evaluating qualitative research. These are trustworthiness and authenticity. Trustworthiness is aimed at establishing the four variables of credibility, transferability, dependability and confirmability whereas authenticity identifies the wider political impact of social research. These concepts and the strategies I used to satisfy the quality criteria are discussed below:

1.6.2.1.1 Credibility

Credibility is concerned with the plausibility of the research and in ensuring that the findings are true and accurate. During the interviews, I endeavoured to ensure that I understood exactly what the participant was conveying in the way they meant it. This included reaffirming certain points as well as carrying out repeat interviews. Additionally, periodic scientific discussion on the research was carried out. This included doctoral seminars, debriefing and discussion following each field study as well as presentation in conferences. This opened up the research to reflection by peers and experts.

1.6.2.1.2 Transferability

In transferability, the researcher demonstrates how the findings can be applicable to other contexts. These could mean similar situations, populations or phenomena. According to Bryman (2008) whether or not a research is transferable ultimately

depends on a reader. However this can be facilitated by providing a thick description to demonstrate applicability of the findings. In this case, I have made an effort to provide a detailed description of the contexts and steps undertaken in carrying out the research, both in the analysis of the relevant literature and my interactions in the field.

1.6.2.1.3 Dependability

In dependability, researcher demonstrates that the research can be replicable and therefore whether the findings are likely to be consistent and apply at other times. In order to satisfy this criterion, I made sure to keep a clear record of the research process and procedure. This included having a research journal, complete details of the interviews, data collection and analysis decisions. In the results of the empirical study section, I present verbatim accounts where relevant. Similarly, in order to ensure that the reporting was as comprehensive as possible, I used the consolidated criteria for reporting qualitative research (COREQ) checklist proposed by Tong, Sainsbury, & Craig (2007). This proved useful in guaranteeing that a detailed explanation of the methods, context, findings, analysis and interpretation of the data is provided.

1.6.2.1.4 Confirmability

This criterion is concerned with the objectivity of the researcher and reaffirms their neutrality. In order to reduce the risk of bias to a minimum, I regularly discussed the research with my promotor and colleagues. This included regular updates through presentations. Additionally, I discuss in detail the research choices and data analysis to highlight how I arrived at certain decisions in the research process. Furthermore, by selecting case studies that are geographically and culturally different from mine, I have confidence that the issue under study was looked at from a new and nuanced perspective rather than from preconceived theories and background information.

1.6.2.1.5 Authenticity

Authenticity is concerned with the wider political impact of social research. It elaborates for instance how different viewpoints are included, whether it helps members of a community to better understand their community and different views, whether it induces change and whether the necessary steps for the change have been

taken. In authenticity, the emphasis is on the contribution and relevance of the research to its field (Bryman, 2008).

In order to address the criteria of authenticity I sought to incorporate different viewpoints. Through a diverse selection of respondents I strove for adequate representativeness within the social setting and in terms of experiences of the different categories of participants in the process. In terms of effecting change in the community, I view this research as capable of influencing the policy and practice of truth commissions recommending reparations. The contribution of this research to the field is in seeking to highlight the relevance of studying post-truth commission processes, namely the follow up and implementation frameworks of their recommendations. Additionally, theoretically, it links together three fields of TJ, Criminology and implementation studies showing how these fields could be beneficial to the others' growth.

Conclusion

This chapter focused on the methodological decisions concerning the research. In it, I elaborate on the scope, research question, data collection approaches, data processing and analysis as well as reflect on the research ethics and quality guidelines.

The main argument in this study is that despite the popularity of truth commissions as a TJ mechanism, there has been limited attention to the processes following its closure, specifically in following up and implementation of their recommendations. The central question asked is "*what happens to the recommendations on reparations made by truth commissions after the completion of the commission?*" The approach is to first analyse how truth commissions have framed reparations and to assess the status of the implementation and its impact on the victims. Secondly, it broadens the scope to understand how other fields, notably criminology and implementation studies have addressed issues of truth, reparation and implementation respectively. The overall aim of the study is to understand how different stakeholders respond to truth commission recommendations and to develop a framework for studying how the implementation is carried out. The methodological approach expounded on in this chapter is a qualitative methodology consisting of a desk research and field work in Sierra Leone and Ghana.

Despite the challenges in terms of access, limited respondent sample and the issue of implementation of reparation not being a priority, I was able to engage with a diverse range of respondents. This approach reinforces the argument that for an in-depth understanding of the dynamics of implementation, a first-hand encounter with the relevant stakeholders is critical.

PART II. THEORETICAL CONSTRUCTIONS

"De perpetrator dem dae drive fine jeep"
(Amputee, Freetown)

CHAPTER 2. TRANSITIONAL JUSTICE

2.0 Introduction

Transitional Justice (TJ) approaches have become a standard response to situations following gross and systematic human rights violations. Over the decades, it has established its place in both the academic and practitioner field. TJ has expanded in scope from focusing on transitions from authoritarianism to include periods after a civil conflict, electoral violence and colonial legacies, among others. It has also evolved from largely punishments and perpetrator focus as in the Nuremberg trials to victim-oriented processes. This interdisciplinary field has drawn on both theory and practice from various other fields to construct a relatively stable field of study and practice. Several mechanisms have been employed which have typically been grouped into the four pillars of: criminal prosecutions; truth seeking; victim reparation programmes and institutional reforms. This chapter explores the transitional justice discourse. First, it discusses the definition of TJ and how it has evolved to its present state. Second, it reviews the four pillars and third, it discusses the linkages between truth commissions and reparation.

2.1 The growth of Transitional Justice

The usage of the term transitional justice gained prominence in the late 1980s and 1990s in the human rights and post conflict discourse. This was in response to the complex status quo created by the fall of the authoritarian and military regimes in central and south America and central and eastern Europe and the emergence of democratic ones (Arthur, 2009; Bell, 2009). Central in these deliberations was the triple dilemma of how to frame a smooth transition leading to stability, what to do with the perpetrators to promote accountability and how to assuage the demands of the victims.

It is thus from that background of transitioning from authoritarianism to democracy or civilian rule that TJ has been described from a narrow framework with a focus on this political shift in power. Teitel (2000, 2003, p. 69) for instance defines TJ as “the conception of justice associated with periods of political change, characterised by legal responses to confront the wrong doings of repressive predecessor regimes.” This definition falls into the narrow category based on four arguments. (1) It is limited to only political change thereby eliminating other forms of transitions. (2) It

conceptualises all that can occur in the post transition phase through the lens of justice. In reality however, there is a myriad of concerns in these periods beyond justice. (3) It focuses on the legal responses which down-plays other mechanisms and processes that may be used in TJ. (4) The implied assumption is that there is a definite period in which transitional justice sets in (Roht-Arriaza, 2006). Following up on the forth observation, Roht-Arriaza (2006) further argues that it presupposes that TJ sets in right after the old regime ends, yet in reality TJ can be instigated years after the transitions.

The narrow description of TJ was influenced by the kind of transitions at that time, which were mainly observed as shifts from authoritarianism to democratic regimes. The field of TJ was also not yet well known although gaining prominence following the three volume publication by Niel Kritz (Kritz, 1995a, 1995b, 1995c). The earlier definitions however fall short of capturing the changing landscape of TJ. Some of the definitions, such as offered by Elster (2004) mention specific features that TJ should comprise of. He refers to TJ as “the process of trials, purges and reparations that take place after the transition from one political regime to another” (p. 1). According to him, transitions involve interactions between the old and new governments as well as internal and external influences which impact upon the nature and outcome of the transition.

The notion of TJ comprising of interactions is further promoted by Bell (2009). She refers to it as consisting of bargains and trade-offs which emerge as societies seek for the most suitable mechanism for dealing with the atrocities and various actors in both the old and new regimes as well as in the period before, during and post conflict. This definition is reflective of the broadening focus and range of TJ as well as the inclusion of other fields within it.

The United Nations in streamlining its activities to incorporate TJ define it as “comprising of the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation” (United Nations, 2004, para. 8). This extended definition is reiterated in the 2010 and 2011 reports where the UN elaborates on how it has approached conflict and post-conflict societies with an awareness of TJ issues right from brokering peace deals to implementation of recommendations arising out of TJ mechanisms such as truth commissions (United Nations, 2010, 2011).

This broad definition of TJ is shared by other scholars and institutions alike. Roht-Arriaza (2006) for instance states that TJ can be defined broadly to include just about any processes and mechanism that societies undertake to deal with a legacy of widespread human rights violations. She describes it as “that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law” (p. 2). This may include efforts including structural and institutional reforms to projects such as building memorials or enacting commemoration days. This perception tends to be all-inclusive and does not limit to a particular approach or strategy. It also is not time bound as it does not specify how far back violations committed can go.

Similarly, Van Zyl (2005, p. 209) defines TJ as “an attempt to build sustainable peace after conflict, mass violence or systematic human rights abuse.” While The International Centre for Transitional Justice (2009) refers to it as “the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses.”

In analysing the growth of TJ, Teitel (2003) has linked its evolution with the developments in the responses to international crimes. She identifies three phases; 1945 post-war phase associated with the Nuremberg trials and international responses to international crimes. The post-cold war phase associated with democratic transitions and modernisation. This period is linked with the transitions occurring in Latin America and Eastern and Central Europe. The third phase, also known as the steady-state phase is characterised by the “normalisation of transitional justice” (pp. 89–92) where the international responses to international crimes which were considered to be established under extraordinary circumstances become the norm. She highlights the establishment of the International Criminal Court (ICC), International Criminal Tribunals of Yugoslavia and Rwanda as examples of this normalisation of responses to international crimes.

Teitel’s genealogy is invaluable in highlighting the evolution of TJ and how the transforming political conditions, expanding scope of political actors and expanding human rights dilemmas played a crucial role in the development of TJ discourse. It however limits this discussion to the judicial responses whereas TJ has comprised of multifaceted approaches which have evolved with the different transitions. Thus there is a shift in the focus of TJ from largely political changes as in the 1980s to include a

wide spectrum of issues like civil wars, genocides, development, democracy and rule of law, among others. Another angle that is not captured in the genealogy is the phenomenon of already stable and democratic societies establishing TJ mechanisms to address historical injustices. Krueger (2016) and Parmentier & Aciru (2016) for instance have addressed this issue in reference to truth commissions however it serves to show how TJ has become a standardised response to international crimes and historical injustices.

In unpacking the definition of TJ, it is important to understand the various contexts in which it is understood and practiced. The complexity in defining TJ has been broken down by Vandeginste (2009) who argues that TJ is interpreted and used in different ways and identifies five dimensions; as a (1) practice, (2) policy issue, (3) specific approach, (4) normative concept, and (5) field of research (p. 7). This broad conceptualisation of TJ covers the definition and usage of the term TJ which often is dynamic as well as takes into account the local realities such as the social structures, local knowledge, histories and the underlying assumptions that would result in 'frictions' (Hinton, 2010). More so, such an understanding closely reflects the perception of TJ I encountered while in Ghana and Sierra Leone.

A broad definition of TJ closely describes the approach to TJ that was taken in the case studies, Ghana and Sierra Leone. As is further elaborated in chapter 5, Ghana experienced periods of unconstitutional rule and authoritarianism in which human rights were violated. Successive regimes from 1957 – 1992 employed repressive and violent means to entrench themselves in power. During the transition to democracy in the 1990's, national reconciliation featured prominently on the agenda. The irony in using the national reconciliation discourse however, was that during the transition from unconstitutional to constitutional rule, indemnity clauses were added into the 1992 constitution which in effect shielded the perpetrators from possible accountability. It therefore was not possible to pursue justice through legal means at the same time bearing in mind the cumbersome and lengthy process this would entail if one attempted using the national courts. Ten years after the return to constitutionalism, the search was still on for how to deal with the perpetrators, victims and the human rights abuses of the past.

Ghana generally approached its violent past cautiously and quietly. A low key on-going restitution process had already been underway although this was not framed under TJ and neither was there any real effort at confronting the violations, mostly because

despite the regime change, the power still remained in the same hands. The NRC process however brought to the forefront the discussion on issues of TJ. In this case, TJ was closely identified as an alternative approach to achieving accountability. Thus specific approaches, namely the NRC and the follow up recommendations were identified and utilised to deal with the human rights violations and indemnities of the perpetrators.

The Sierra Leone case (chapter 6) is more widely known due to the conflict that attracted widespread media and international attention. Following the war, a number of mechanisms were instituted for dealing with the war atrocities and the different parties to the conflict. As such a broader conceptualisation of TJ is evident. Multiple means both at local, national and international level were employed to confront the violent past including the Special Court for Sierra Leone and the TRC.

Based on the different paths that the two countries follow, I lean towards the view shared by scholars such as Fletcher & Weinstein (2002) and Roht-Arriaza (2006) that there is not a single and conventional or linear pattern transition. I therefore concur with the broad definition of TJ encompassing a range of approaches employed by societies to deal with their atrocious past. In the end, TJ comprises of a move from a “period of violent conflict or oppression towards peace, democracy, rule of law and respect for individual and collective rights” (International Centre for Transitional Justice, 2009, p. 1). The evolution aside, TJ mechanisms have been popularly embraced by countries in different contexts ranging from those emerging from authoritarian rule, regime change or conflict to those grappling with violent incidences such as election violence to established democracies confronting historical wrongs. TJ therefore seeks to employ approaches which can enable society and individuals to effectively confront and deal with a violent past in order to establish or renew civic trust, enhance reconciliation and prevent the recurrence of the atrocities.

In recent years, TJ as a concept and as a practice has become normalised in that it has become the automatic response and catch phrase in periods of transition or with anything to do with repression whether in the past or present. While in a museum in Freetown (Sierra Leone National Museum), I struck up a conversation with a gentleman who on learning I was a researcher with interest in the truth commission, kept liberally using the term TJ. I inquired what he meant by TJ and his response signified how sometimes at the local level, TJ is literally taken as a complex mix of processes, mechanisms and institutions. According to him, the entire experience of war

and negotiating the end of the war is TJ. Similarly, the various mechanisms of the truth commission and the Special Court for Sierra Leone signified TJ. Interestingly though, mechanisms geared towards the perpetrator such as the Disarmament, Demobilisation and Reintegration (DDR) as well as the Amnesty process did not qualify as TJ. In this way, TJ was associated with a victim centred process. This perception was further consolidated by the presence of various victim focused NGOs working under the umbrella of TJ.

Despite the advancement in theorising TJ, it still has room to expand, mainly in the post-TJ phase, a period where the TJ programmes have come to an end. Collins (2010) has framed post-TJ as a resurgence of accountability demands for earlier human rights violations, usually in contexts where amnesties were the norm following the transition. This perception also becomes relevant in contexts of implementation of recommendations following the end of a TJ mechanism.

TJ may be a catchphrase that has been popularised mainly by international and local NGOs however, there is still a gap in how it is translated at the local level, particularly for the victim waiting for their reparation benefit up to ten years after the decision to award the said benefits.

2.2 Exploration of the mechanisms

In general, four main mechanisms are associated with TJ; criminal prosecutions, truth seeking, reparations and institutional reforms. As pointed out in the previous section, following periods of mass violations, societies are confronted with among others, how to deal with these experiences and what to do with especially the perpetrators, victims and other actors. In scenarios where the society has also been confronted with large scale destruction of institutions, property, livelihoods and mass displacement, rebuilding is not only centred on how to deal with the victims and perpetrators but also infrastructural and institutional rebuilding. These are all competing demands in a resource strained economy.

Parmentier (2003) in the Truth-Accountability-Reparation-Reconciliation (TARR) model suggests four interrelated key issues facing post conflict regimes and which any TJ mechanism(s) should consider; searching for the truth, ensuring accountability, providing reparations and promoting reconciliation. To these four components, Parmentier & Weitekamp (2007) further add the components of trauma and trust. In

theory, these issues raised rightly reflect the multiple layers transitioning societies are confronted with. However, what it fails to look at is the ability and willingness of the different actors to successfully follow through on such issues. It is one thing to identify needs but it is quite another to satisfactorily meet those needs and any TJ mechanism has to consider these two aspects of design and implementation. Although with specific reference to reparations, Cammack (2006, p. 216) asserts that “a well designed and implemented programme can accomplish two goals: It can bring closure to past rights abuses and the divisions and antipathy they engendered and it can set the stage for new democratic dispensation where rights are emphasized and protected.” However, the impact of any other TJ programmes can just as well bring about the intended consequences when designed and implemented appropriately.

A number of mechanisms have been established to address the atrocities and their impact among affected populations. These include prosecutions, both international and national, reparations, truth seeking, institutional reforms, and vetting and dismissals (United Nations, 2004). To these, the ICTJ (2009) includes gender justice and memorialisation efforts. These mechanisms offer a variation ranging from international interventions such as international prosecutions to domestic mechanisms as well as both judicial and non-judicial interventions.

However, the decision on which mechanism(s) is most appropriate for a particular context should be determined by the TJ goals of the society as each trajectory has a different impact on society (Aukerman, 2002). Whether it is punishment, reconciliation or restoration or any other number of goals, each of the mechanisms possesses varying degrees of strengths and weaknesses in achieving the TJ goal. In some cases two or more mechanisms are instituted either simultaneously or consecutively to achieve multiple goals.

The following section discusses the four mechanisms of criminal prosecutions, truth seeking, reparation and institutional reforms. Thereafter it examines the linkages between truth commissions and reparations.

2.2.1 Criminal prosecutions

The Nuremberg and Tokyo war crimes trials following World War II were significant in setting the trend for the prosecution of individuals for committing international crimes. This trajectory focused on holding perpetrators accountable for the atrocities.

Drumbl (2007) argues that this method attempts to transplant ordinary criminal processes to deal with extraordinary crimes which can be challenging considering the characteristics of international crimes. This development according to Hinton (2010) individualises guilt while undermining group blame. This is because despite the mass perpetration of crimes, individuals are held accountable for their specific roles in perpetuating specific crimes. Moreover, the main motivations for international prosecutions are geared towards retribution, deterrence and expressivism (Drumbl, 2007, pp. 149–180), which might not necessarily be consonant with local needs.

Subsequent international criminal justice mechanisms such as the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Court (ICC) have maintained this approach thereby dealing with disproportionately few perpetrators in comparison to the actual number. The overriding argument being that they deal with individuals who bear the greatest responsibility. The ICTY however also included those considered as low level offenders such as Dražen Erdemović and Duško Tadić (Clark, 2008; Drumbl, 2007).

International trials are significant in some areas such as portraying the commitment of international community to address these atrocities, demonstrate that international crimes will not be tolerated at the international level and contribute to raising awareness about the atrocities wherever they are committed (Drumbl, 2007), a case in point being the self-referral by Uganda to the ICC regarding the LRA that internationalised the conflict in northern Uganda. Furthermore, they create the impression that something is being done to redress the harm particularly for the victims who are able to see some of the ringleaders of the atrocities being prosecuted.

However, these tribunals tend to fall short on the ideals of procuring a broad based sense of justice or even contentment. They are far removed from the victims themselves, certainly in the case of the ICTR, ICTY and ICC and therefore there is less chance of direct observance of justice being done. There is further a huge disparity between the numbers of perpetrators tried in comparison to the number of perpetrators who actually participated in the atrocities which raises the question of what happens to the low level perpetrators who in most cases were of closer proximity to the victims. Smith (2009) in his discussion on the prosecution of genocide crimes posits that international justice falls short of appeasing the victims and may turn out to actually be “unfair and unhelpful.” He however attributes this to the top-down

approach that international justice seems to embrace. The processes are in most instances hatched and implemented by the elites, an argument reiterated by Drumbl (2007). This “[externalisation] of justice from the communities most traumatised by the atrocity (p. 124) and being taken up by the “technocratic savvy of international lawyers” (p. 135) may lead to the justice being offered questioned and reluctantly accepted by survivors, perpetrators and residents of post conflict regions (Smith, 2009) thereby falling short of their aim of deterring perpetrators, bridging reconciliation and rendering justice.

An approach to bring the trials to the local level while still retaining the international aspect was the creation of hybrid tribunals. These were established in the location in which the atrocities took place, the most notable cases being the Special Court for Sierra Leone (SCSL), East Timor Special Panels, and the Extra Ordinary Chambers in the Courts of Cambodia (ECCC). However, these are still motivated by the aims of retribution and deterrence with a focus on punishing through incarceration of the perpetrator. Even with the close proximity to the victims and crime scene, they still remain largely inaccessible to the victims. Additionally, the astronomical costs incurred by these courts in the face of scarce resources have been called out for instance by Gberie (2014) for the case of Sierra Leone and prompted debates on how to maintain the ideal human rights standards and the local realities in precarious contexts such as post conflict societies (Parmentier, Aciru, Saeed, & Rauschenbach, 2016).

At a more local level, pursuit for redress for international crimes has been incorporated in the domestic courts. In Uganda, the International Crimes Division was established to try serious crimes before national courts (Human Rights Watch, 2012; The Judiciary of the Republic of Uganda, n.d.). Rwanda also utilised the domestic courts to try genocide perpetrators but it was increasingly overwhelmed by the large numbers of perpetrators, criticisms of not following due process and inadequate institutions, among others (Human Rights Watch, 2014). The advantages of using domestic courts over international courts mainly lie in their close proximity to where the atrocities have been committed and strengthening the domestic legal system and overall rule of law (Ryngaert, 2010).

Whether international, hybrid or domestic, judicial proceedings still follow a similar trajectory that focuses on sentencing the perpetrators. They remain distant for many victims with a few participating as witnesses. More critical however is the limitations

encountered in attempting to apply the stringent requirements of the legal system, primarily designed for ordinary crimes in a domestic context to extraordinary crimes (Aukerman, 2002).

In the realm of domestic judicial proceedings, a further hybridisation has occurred where indigenous justice practices are incorporated with the mainstream procedures (Huyse & Salter, 2008). Rwanda's system of *gacaca* has dominated this approach. In it, the 'traditional' practices were combined with the criminal justice system to pursue cases related to the genocide. This initiative, heavily reliant on local participation has received mixed reviews ranging from acclaims in its promotion of reconciliation and fostering accountability to criticisms regarding its treatment of perpetrators, collectivising guilt and travesty to the criminal justice system (Ingelaere, 2012). The multiple representations (Ingelaere, 2012, 2016) aside, *gacaca* has increased the appeal for more localised and community oriented mechanisms of justice in other post conflict societies (Longman, 2009).

The appeal for prosecutions as a TJ mechanism is linked to assumptions about its contributions towards establishing the truth through for instance exposure of the wrongdoing and acknowledgement of harm, strengthening the rule of law, reinforcing moral norms through a collectivised understanding of wrong behaviours rest and furthering restorative goals including repairing harm and restoring relationships (Aukerman, 2002).

2.2.2 Truth seeking

The right and significance of knowing the circumstances under which crimes were perpetrated has become a banner for truth seeking mechanisms (Parmentier & Aciru, 2016). The right to truth involves knowing to the fullest extent possible the details of the violation. Clarifying the facts of a painful past is therefore a prominent feature in the period following repression or violence. It is supported through various instruments at international and regional levels (Landel, 2009) which are still evolving (Groome, 2015). There are a number of initiatives that can be utilised to seek the truth about past violations. Freeman (2006) for instance examines at least eleven mechanisms for investigating human rights violations (Freeman, 2006, pp. 40–69) while Bickford (2007) and Hayner (2011) refer to official, semi and unofficial inquiries. This significance is to emphasise that whereas truth commissions have dominated the field, other forms of inquiries are also in existence and can play crucial roles in

establishing the truth. In this study however, I focus on the mechanism of truth commissions.

The number of truth seeking mechanisms since the 1970s when this phenomenon caught on varies from scholar to scholar. USIP, in their database list 33 truth commissions and 12 commissions of inquiry from the period 1974-2011 (USIP, n.d.-b). Dancy et al., (2010) however list 37 truth commissions from 1974 to 2005. (Olsen et al., (2010b) on the other hand cite 53 cases of truth commissions through 1970-2007 while in Wiebelhaus-Brahm (2009), there is a compilation of about 80 cases cited by different authors between 1970 and 2006.

Despite the debate on the characteristics of truth commissions resulting in a discrepancy in the totals, there is a proliferation of truth seeking mechanisms, a need to establish the truth about particular events and official acknowledgement of this truth. This resonates with the notion of the right to the truth and the obligation of the state to provide information to victims and the society about the circumstances surrounding serious violations of human rights (UN Commission on Human Rights, 2006).

Societies have therefore readily worked towards seeking the truth as a way of addressing issues of past human rights violations and abuses (Freeman & Hayner, 2003). Teitel (2003) places the emergence of truth commissions in the second stage of transition in her genealogy. According to her, the expanding scope and complexity of crimes, perpetrators and victims placed limitations on the trial system which made the model of truth commissions and commissions of inquiry more attractive as these were able to “offer a broader historical perspective, rather than mere judgements in isolated cases” (p. 79).

Additionally, the operations of truth commissions are more fluid and avail more opportunities for the interaction between victims and perpetrators. Roht-Arriaza (2006) points out that the non-judicial methods, like truth commissions seem more adaptable to dealing with the many shades of grey that characterise most conflicts. More so, truth commissions tend to be more victim oriented and provide a less confrontational option while still not ignoring the violations and doing something for the victims, setting it within a larger social context focusing on the overall pattern of violations rather than zeroing in on the relatively few cases that happen to make it to trials. The process can therefore among others, offer significant benefits for the victim

and society in terms of obtaining the information about them or their loved ones which may provide a sense of closure as well as a sense of satisfaction from the official acknowledgment (de Greiff, 2006a).

In terms of definition, Hayner (2002, 2011) has broadly defined truth commissions as a temporary official body authorised by the state to investigate a pattern of past human rights abuses or violations of international humanitarian law. A truth commission is often mandated to offer an acknowledgement of the truth regarding past abuses and human rights violations; reduce the likelihood of future human rights abuses and make specific recommendations for reform.

In the 2011 edition, after consideration of the various debates regarding the defining parameters of truth commissions discussed in her previous publications, particularly the contribution from Freeman (2006), Hayner proposes five parameters for defining a truth commission (pp. 11–12):

- i. *Focused on the past, rather than ongoing events;*
- ii. *Investigates a pattern of events that took place over a period of time;*
- iii. *Engages directly and broadly with the affected population, gathering information on their experiences;*
- iv. *Temporary body with the aim of concluding with a final report;*
- v. *Officially authorised or empowered by the state under review.*

The operations of truth commissions have however increasingly attracted controversy on among others, the mandates and ability to provide healing and closure. Critiques have highlighted the time period of the commissions, the non-judicial nature and the notion of a 'single' truth. According to Wilson (2001) with particular reference to the South African case, truth commissions may provide short-term healing for others but not all and do not work on the power relations which sometimes remain the same. They also run the possibility of re-traumatizing victims when their expectations are not fulfilled. This observation could easily be extrapolated to several other cases following the work of the truth commissions who are often faced with the question of 'what next?' following the conclusion of the work of these bodies.

The 'what next' question is especially relevant considering that truth commissions are temporary mechanisms (Aciru, 2017a; Hayner, 2011; Parmentier & Aciru, 2016; United Nations, 2013). Truth commissions are additionally challenged in their inability to offer substantive assistance during their operations. Often, victims approach the

commission with the expectation that their demands, particularly for reparations will be immediately fulfilled or at the very least within the short-term but many truth commissions do not have the power nor the resources to do this but rather defer these demands to their proposals for recommendations. Exceptions such as the truth commissions in South African and Timor-Leste were able to provide urgent interim reparations to some victims who gave statements (Hayner, 2011). A number of them have also provided therapeutic services such as locating the remains of the missing and commemoration and memorialisation activities as well as counselling services prior, during and after the hearings (Guthrey, 2015).

However, the legacy of a truth commission is inextricably linked to the implementation of its recommendations and implementation has so far remained weak. Hirsch, MacKenzie, & Sesay (2012) among others have argued that the post-truth commission phase is an area that has received significantly little attention. It is critical that with the end of a truth commission, substantial attention should be directed to evaluating whether it has achieved what it set out to achieve in its mandate as well as what is expected of it as a truth commission.

With their limited time frame of operation, truth commissions set the momentum towards redressing past harms however, they do require a certain level of sustainability through adequate follow up, implementation and research. Unfortunately however, what happens following a truth commission has remained largely unattractive to governments, academicians and other local and international stakeholders.

2.2.3 Victims reparations

Where a victim has suffered gross violation of international human rights law and international humanitarian law, they are entitled to, under international law adequate, effective and prompt reparation for the harm suffered. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and serious violations of international humanitarian law (UNBPG) specifies that “where appropriate and proportional to the gravity of the violation and the circumstances of each case [victims should be] provided with full and effective reparations” (UN General Assembly, 2006, principle 18).

However, it still remains challenging to determine what amount of money or symbols can truly repair and make whole all the harm that has been done (Rombouts, Sardaro, & Vandeginste, 2005). There is no amount of actions that can undo what has been done since “life has no undo button” (Elster, 2004, p. 167). Despite this, there are still a range of possibilities and measures that can be implemented to ease the suffering whilst acknowledging the losses.

According to Redress, the principle of reparation has existed in international law and other systems and concerns an obligation to redress damage to an injured party by the wrongdoing party (Redress, 2003). It may be looked at from a broad or narrow perspective (de Greiff, 2006). The former applies to “all measures that may be employed to redress the various types of harms that victims may have suffered as a consequence of certain crimes.” This may include both direct benefits as well as mechanisms which will provide reparative benefits such as truth telling, criminal justice and institutional reforms (p. 452). Roht-Arriaza (2004) also provides a broad understanding of reparation in which she describes it as “the embodiment of society’s recognition, remorse and atonement for harms ‘inflicted’.” These may be both material constituting of restitution, rehabilitation, monetary and service packages or moral means including truth, justice, assurances of non-repetition, acknowledgement, apology and measures to bring “satisfaction” to the victims such as reburials, ceremonies and commemorations. According to her, reparations fulfil four purposes, “reparations for the body to enable survival, reparations for the spirit and sense of justice, [reparations] for some sense of a decorous and [reparations for a] secure future for future generations” (pp. 158–159).

A broad conceptualisation of reparation however runs the danger of remaining remote to the victims, particularly from efforts that are aimed at providing reparative benefits. This is because these efforts may not directly respond to the specific harms and damages that victims might have suffered (Hayner, 2011), particularly if it involves direct losses to the body and property.

Consequently, reparations is sometimes framed more narrowly as specific measures to directly benefit the victims (de Greiff, 2006). This could be financially through compensations, access to social services or symbolically, among others.

In TJ framework, reparations are typically considered a cornerstone for facilitating healing and reconciliation through acknowledgment of the physical, psychological and social damage (Garcia-Godos, 2008). Reparations can play a significant role in the healing process and according to de Greiff (2006a, p. 2), “for some victims, reparations are the most tangible manifestation of the efforts of the state to remedy the harms they have suffered.” This is particularly so when it moves beyond the direct benefits to victims to addressing the structures that enabled the atrocities to take place.

On a hypothetical level, six main questions are asked when considering reparation. These include; why provide reparations? What forms of reparations are to be awarded? Who provides the reparations? To whom are reparations awarded? What objectives does it seek to fulfil? And, how should the programmes be implemented?

Why provide reparations?

Various scholars have attempted to discuss why it is important to provide reparations. Rombouts (2004) proposes two grounds for reparations, the legal and moral grounds. On the legal grounds, reparation is framed as a right and it is therefore an individual right to receive reparations for harm suffered. This is also the view framed by for instance the UNBPG (Principle VII(b)) and international law. The moral ground is motivated by general feelings of sympathy and/or solidarity for harm inflicted and suffered by victims. Through reparation, the victim is recognised, the harms are addressed and avenues are opened to facilitate the interaction between the perpetrators, victims and society.

Similar to the moral justification for reparation, Appiagyei-Atua (n.d.) in an unpublished paper suggests a normative justification for reparation consisting of interactions between the victims, perpetrators and community. Using a community emancipation framework Appiagyei-Atua (2000) argues for a *needs-capacities-duties-rights-development* framework which claims that victims of rights abuse have special needs which have been generated by the past abuses they suffered. The victims therefore need to be given the opportunity to express how the violations took place, communicate their special needs and survival story, among others. The perpetrators on the other hand need to admit the wrong, seek forgiveness and offer redress while the community plays the role of rehabilitating both the victim and offender.

Rombouts & Parmentier (2009) on the other hand identify three objectives of reparations; restoration of the victim to the situation in which they were before the violation occurred; bringing the victim to the state that would have existed if violations had not occurred; deterrence to wrongdoers from causing harm in the future. From the limitations of the above, they suggest a fourth objective of seeking a new balance aimed at avoiding renewed cycles of violence. The authors further suggest a process-oriented approach as an appropriate framework for managing reparation which emphasizes the central role of the victims (Rombouts, 2004). The implication is that reparations programmes need to take account of the different stakeholders as well as the resources necessary for such a programme.

Who are the beneficiaries?

The UNBPG (article V) provides that the beneficiaries of reparations are victims of gross violations of international human rights law and serious violations of international humanitarian law. It further clarifies that victims can be individuals or groups who have suffered harm. The harm could be physical, mental, emotional, economic or an impairment to their fundamental rights. The victims can be direct or indirect such as family, dependants or persons intervening to assist a victim (UN General Assembly, 2006). This may appear a straightforward categorisation however in practice it is much more complicated.

The context of International crimes presents a lot of grey areas in profiling victims and perpetrators (Huyse, 2003) therefore the interpretation of the beneficiaries of reparation has sometimes been challenging. Other factors such as the available resources or political implications have also curtailed efforts on determining who a victim entitled to benefits is.

Forms of reparation

The UNBPG provides a comprehensive breakdown of possible reparation packages which it has grouped into five elements: Restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In restitution, the idea is to “restore the victim to the original situation” before the harm and may include measures such as restoration of liberty and rights, return to one’s place of residence, restoration or employment and return of property (Principe 19).

The dilemma however is that it simply is impossible to restore to the original situation (Rombouts & Parmentier, 2009). Even if the rights and property are eventually restored to the state in which the victim originally was, this approach does not account for the period that the individual was deprived of their rights or property. If an individual is deprived of their home or employment for instance for ten years, having it restored may not rectify other harms and indignities they might have endured during the time of their deprivation. This approach therefore assumes that the situation would have remained the same before and after the violations by seeking to restore the victim to the situation before the violation, which is a fallacy. Sometimes, the situation before the violations may not have been ideal, for instance in cases of marginalisation, inequality or poverty. This gives credence to the approach of combining different forms of reparations and endeavouring to make them more context specific.

Compensation mainly relates to financial benefits and are costs provided for “any economically assessable damage” (Principle 20). The damages may range from physical, mental, material and moral. It can also include loss of opportunities like employment, education, social benefits, earning and earning potential. The costs may also be incurred in search of legal or expert assistance, medical, psychological and social services (Principle 20). In principle, this approach of compensation complements what has been offered in restitution as it takes into account the period in which the individual suffered deprivation as well as the total sum of the struggles endured (Rombouts et al., 2005). However, owing to the huge financial obligations expected in this approach, it might not be a sustainable option for many transitioning societies.

Rehabilitation includes medical and psychological care as well as legal and social services (Principle 21). The UNBPG does not go into detail to expound on this form of reparation. It is however a major issue that comes out in post conflict debates especially where the violations cause serious physical and mental injuries. According to Redress (2009), rehabilitation as a form of reparation is still complex in terms of its definition and the details of what it should involve and how it should be done. “‘Rehabilitation’ continues to be an elusive form of reparation. It is unclear what exactly it means, to whom it applies and for what duration (many human rights violations have life-long and multigenerational impacts), who has the obligation to afford it and how practically it can be afforded” (pp. 5–6). Redress further distinguishes between a

narrow approach to rehabilitation that only focuses on the physical and psychological care and a holistic approach that encompasses all that is necessary for an individual to reconstruct their lives and reduce the consequences of the harm endured. This would involve all aspects of the physical, psychological, social, legal, and financial services as hinted at by the UNBPG. Shelton (2006) further elaborates that rehabilitation should where necessary be broadened beyond the individual to include the family, local community and society and aims at restoring physical and psychological wellbeing of the beneficiaries. The challenge with rehabilitation is that despite it being included among the forms of reparation, it is often associated with humanitarian assistance, mainly by international organisations and NGOs as well as developmental programmes (Rombouts, 2004). It therefore becomes difficult to draw the line between what aspects of it are reparation as a right and which are included in the general reconstruction and development efforts.

Under satisfaction, the UNBPG provides eight components of which might contribute to satisfaction. These include; cessation of hostilities, full and public disclosure of the truth, search for the disappeared and killed and assistance in recovery, identification and reburials, restoration of the dignity, reputation and rights, public apology, sanctions against perpetrators, commemorations, tributes and remembrance strategies (Principle 22). Satisfaction however is a vague concept (Rombouts, 2004) and sometimes very individual and it is not quite clear what criteria are to be used to measure levels of satisfaction. She for instance points out that cessation of hostilities can hardly be referred to as reparation. Reparations can only be done when violations have ceased and “stopping any further violations is not a form of redress, it is a basic respect of a right” (p. 51). However, leaving the debates aside, the value that the measures that lead to satisfaction can bring to individuals and groups should not be underestimated.

Guarantees of non-repetition, as the name suggests, are measures intended to contribute to the prevention of the recurrence of the factors that brought on the harm. This basically involves reorganising the socio-political structures (Rombouts, 2004). It includes acts such as military and security reforms, ensuring international standards of due process, fairness and impartiality in civilian and military proceedings, strengthening the independence of the judiciary, protection of persons in the legal, medical, media, human rights defenders and other professionals, providing human

rights and humanitarian law education, promoting observance of codes of conduct and ethical norms, promoting mechanisms or preventing and monitoring social conflicts and their resolution and reviewing and reforming laws (principle 23).

Who provides the reparations?

According to the UNBPG in article IX (15-17), the primary duty to provide reparations lies with the state. This can be done directly through the provision of the benefits, establishing national programmes and other assistance and enforcing judgements against liable individuals or entities (UN General Assembly, 2006). The basis for state responsibility however is that the state is liable for the acts that require the reparation. The ICTJ further concurs with this role of the state in their definition of reparations as “state-sponsored initiatives that help repair the material and moral damages of past abuse” (International Centre for Transitional Justice, 2009, p. 1).

The question of who provides the reparations however is contentious. Where the state is strongly implicated in violations or where the perpetrators retain strong positions in the new regime and their guilt is undisputable, it might provide the grounds to demand that the state pays the reparations. However, when it is a new successor regime or when perpetrators are at pains to cover their tracks, the payment becomes problematic particularly because reparation is often associated with acceptance of guilt, a burden the new regime or even the perpetrators may not be ready to undertake. Furthermore, where the guilty persons or other entities such as international corporations and states are found liable and required to pay the reparation, there simply may not be a mechanism or a willingness by the state to enforcing such a decision.

Although it is clear on who is responsible for paying reparations, the context in which the reparation decisions are implemented is heavily influenced by the socio-economic and political situation in each context which has resulted in mixed record of compliance, semi-compliance and non-compliance in providing the specified reparations.

The above elements have generally been taken as a comprehensive approach to reparations, ensuring redress to not only the direct victim but to the local community and society as a whole. It also captures aspects of direct benefits as well as elements

that provide reparative benefits. It is however virtually impossible to establish a reparation programme that contains all of the above elements, particularly in a resource strapped post conflict country with competing demands and priorities. As such, a number of considerations need to be made in determining the best reparations fit for a particular context as discussed below.

Individual and Collective Measures

Reparations can be paid individually, collectively or a mixture of both. In cases of mass atrocity, it is not only about the masses. Violations can be targeted at individuals but also at groups as a whole therefore the experiences and consequences of violence can be individualised or sometimes shared by a larger population despite having been directed at an individual.

Individual reparations can come in handy because they target individual victims. Individual reparations recognise the specific harm to a specific individual and has a bearing on their worth as a citizen (Roht-Arriaza & Orlovsky, 2009). One of the setbacks to individual reparations however, is that they often require a relatively large resource base (Rombouts et al., 2005), there is also an additional challenge of determining what each individual should get because often the harm varies. In a situation where there are large numbers of victims, it may not be possible to award reparation on an individual basis but rather a flat sum per individual. For instance in Chile's case it was assumed that everybody who had been held in custody was subjected to torture and therefore all were awarded the same compensation.

Where individual reparations are not "feasible, desirable or sufficient" (Rombouts et al., 2005, p. 460), collective reparations can be made. Roht-Arriaza & Orlovsky (2009) further assert that collective reparations may be instituted as a response to collective harms and harms to social cohesion particularly in instances where there is a strong sense of collective identity. According to them, the awarding of collective reparations not only has the possibility of re-establishing social solidarity but also "maximises the effectiveness of existing resources" (p. 3). Where there was a deliberate structural discrimination and oppression of a group, individual reparations tend to be inadequate and difficult to manage. In practice however, reparations tend to comprise a mixture of both individual and collective.

Most of the debates on the appropriateness of individual or collective reparations are framed from the assumption that they constitute monetary benefits. For non-monetary benefits such as apologies, sometimes individual responses might be more beneficial considering that in group harm, individuals experience the harm differently. Such a gesture could be as simple as providing individual apologies or mentioning individual names rather than as a group.

Symbolic and material measures

The decision on whether to award symbolic or material measures may arise out of a number of considerations. In a resource strapped economy, symbolic gestures such as apologies, monuments or reconvertng and renaming structures which might be linked to the violations might make economic sense. Such symbols can act as a reminder of the acknowledgement and recognition of the victimhood. On the face of it, it could be argued that all reparations are symbolic gestures or tokens of acknowledgement because it would be difficult to restore the victims into a position in which they were before the violations in its entirety.

On the other hand, material measures such as monetary compensation have the potential to meet the tangible needs of the victims. Where the money is available, the payment of funds can also be a quick endeavour and if it is one-time payments finalise the process. The danger of monetary compensation is that they may be interpreted as a payment for the violation. As such the expectation may be a payment equivalent to the harm, which might either amount to unrealistic figures or be impossible to compute.

Reparation as social service benefits

In some cases, reparations are framed as access to social services such as health, education, and housing and are even considered as an alternative to individual monetary compensations (Rombouts, 2004). However, as she further argues at which point does the differentiation between social services as a reparation benefit and an obligation by the state start? Nevertheless, development programmes remain an attractive option for reparation particularly since the assumption is that they can easily be incorporated into the overall development and reconstruction agenda (Cristian Correa, 2014; Roht-Arriaza, 2006; Roht-Arriaza & Orlovsky, 2009).

Despite the clear distinction between the different categories of reparation, it still remains challenging to carry out reparations. This is mostly because of the complexities associated with loss and victimisation. Reparations need to comprise of on the one hand, individual-focused reparations targeting individual needs, and on the other community-focused or institutionalised reparations that target the community with the aim of improving community cohesion, reconciliation and satisfaction. As such, whereas reparation programmes should have a real impact on a victim's life, they also need to be acceptable to the larger society (Correa, Magarrell, & Guillerot, 2009).

Nonetheless, even with the available reparation options, the actual process of provision and implementation is overwhelmed with challenges hence underscoring the importance of undertaking a comprehensive approach to victims' needs and perceptions in post-conflict situations.

2.2.4 Institutional reforms

In a number of cases, state institutions may be responsible for violations. In conflict or authoritarian regimes, the security sector such as military, intelligence services, police and prisons as well as the judiciary and other branches of government become intertwined and complicit in the execution of crimes. In other cases, such as in Peru, the omission of state responsibility leading to the marginalisation and impoverishment of some sections of society contributed to their vulnerability and victimisation (Amnesty International, 2004; Laplante, 2008). In this case, these institutions need to be transformed to prevent the recurrence of violations, re-establish civic trust and restore the legitimacy of public institutions. Purging and vetting are common practices during institutional reforms (Mayer-Rieckh, 2006). Without reforming structures that perpetrated or remained indifferent during the violations or even were non-existent, the best intentioned TJ processes are bound to stall as explored in the case of Cambodia, East Timor and Sri Lanka (Fernando, 2014).

Whereas institutional reforms are sometimes framed in the context of reparations under the element of 'guarantees of non-repetition, in other cases they can be independent processes established during general reconstruction and development efforts. Truth commissions are also taking an active role in including elements of institutional reform in their recommendations.

Institutional reforms as an element of TJ appears to be understudied in comparison to the other three mechanisms. At best, it is treated either as a subset of the other mechanisms or the focus is limited to specific aspects such as the security or judiciary. However, as pointed out by Fernando (2014) institutional reforms need to be as comprehensive as possible in order to ensure that the aims of TJ are achieved (p. 193).

At this point, it is pertinent to emphasise that despite the above breakdown of the different mechanisms, in practice and in an ideal situation, a meaningful TJ process would necessitate the establishment of different mechanisms concurrently or successively. The critiques involving individual mechanisms have in a positive sense given credence to the incorporation of more than one tool in post-conflict reconstruction or an “ecological model” of social reconstruction (Fletcher & Weinstein, 2002) which looks at the interplay of the different tools. ICTJ (2009) refers to this as a holistic approach in which different complementary mechanisms are combined. The range of challenges encountered by societies encountering a transition are more suitably responded to using different and complementary approaches as often “no single measure is as effective on its own as when combined with others (p. 2). Other scholars such as Olsen, Payne, & Reiter (2010a) and Freeman & Hayner (2003) have also reiterated this idea. de Greiff (2006a) on linking truth telling and reparations for instance asserts that whereas truth telling can provide victims with significant benefits, “in the absence of other positive and tangible manifestations, truth by itself can easily be considered an empty gesture, as cheap and inconsequential talk” (de Greiff, 2006a, p. 2) while on the other hand reparations alone, particularly monetary compensation could be considered a payoff.

In light of this interconnectedness of the mechanisms Roht-Arriaza (2006) suggests a process of “interweaving, sequencing and accommodating multiple pathways to justice [in order] for some kind of larger justice [to] emerge” (p. 8). It is with this in mind that in the following section. I consider the linkages between truth commissions and reparations on the basis that truth commissions have increasingly incorporated reparations stressing the significance of reparations and taking measures to include proposals for reparations in their recommendations.

2.3 Linking truth commissions and reparations

A strong argument in favour of truth commissions and reparation processes is the central role they give to victims in the TJ process. The main focus of TCs is in victims

being availed the opportunity to narrate their experiences and be heard (Hayner, 2011). Similarly, in reparations, the focus is explicitly on victims and their situation (Magarrell, 2007; Rombouts et al., 2005). With both mechanisms, the rights of the victims to truth and redress is cemented as well as paving the way towards the process of attempting to repair the harms.

From the practice of truth commissions, it can be noted that in terms of sequencing, the trend has mostly been truth telling preceding reparations programmes. Sometimes, the decision on whether or not to include the issue of reparation in the recommendations of a truth commission is closely linked to its mandate while in other cases, the commissions take on this initiative despite not being in its mandate. Argentina's National Commission on the Disappeared was mandated to establish the facts on the disappearances. It however went ahead and produced strong recommendations on reparations as did Chile, Germany, El Salvador and Haiti among others. In a number of cases however, the mandate specifically calls on it to make recommendations for the reparation of victims such as Ecuador although for some, they have creatively interpreted the mandates and translated phrases such as 'addressing needs of victims', 'preventing future violations' or 'facilitation of reconciliation' to mean proposing measures of reparation.

The argument that truth telling and reparations are complementary processes has for instance been discussed by (Hayner, 2011). She identifies three ways in which truth commissions can be relevant to the reparation process; first by providing a detailed proposal on the structure of the reparation programme. Truth commissions typically interact widely with victims, listening to their stories and soliciting their views on various issues pertaining to their welfare and such information particularly on the needs of the victims can prove useful for a potential reparation programme that seeks to directly address victims' needs. Secondly, it provides a basis for the work of the reparation programme such as available lists of victims, who in most cases already have their stories and experiences verified by the commission. Third, hearing the stories creates an environment that facilitates political and public support for the establishment of a reparation programme. Through focusing the spotlight on the victims, the public is made aware of the harms they suffered and their continued plight as a result of the harm. The shifting of the public mind-set can also further minimise future resentment towards the victims for being beneficiaries.

Furthermore, Hamber (2000) also argues that linking reparations to truth recovery eases the process of making reparations by framing the reparations as an acknowledgement process rather than as a payoff. This is because reparations alone is often not possible to satisfy the victims' need to come to terms with the events of what happened and can be viewed as a government conspiracy to keep the past hidden or even blood money (Roht-Arriaza, 2004). In Morocco, for instance, a reparations programme was set up under the Independent Arbitration Panel in 1999 to compensate the victims and despite paying the beneficiaries, the programme was heavily criticised for among others failure to investigate and reveal the truth about the past which precipitated the creation of the Equity and Reconciliation Commission in 2004 with a more truth seeking mandate. A truth telling process alone on the other hand can also be considered an incomplete process, particularly if the victims are expecting some form of material or symbolic gestures in recognition of their suffering and participation in the truth telling exercise.

Consequently, truth commissions have increasingly included components of reparations for victims in their recommendations. A more challenging setback for linking truth commissions and reparation however is the often inadequate implementation record of truth commission recommendations (Hayner, 2011). In a number of cases, there is a weak follow-up framework or strategy for ensuring that recommendations are implemented. Truth commissions are temporary, usually with a lifespan of between six months to two years and with no powers to enforce the recommendations they propose, thus giving rise to the dilemma of what happens to the recommendations.

Conclusion

Elster (2004), Hinton (2010) and Teitel (2003) among others present an analytic evolution of TJ. A common theme is developing creative and collective responses to unimaginable atrocities and thereby establishing the place of TJ as a theory and practice. The four main pillars that have been considered instrumental in addressing the legacies of serious and massive human rights abuses include; criminal prosecutions, truth seeking, reparations and institutional reforms. These include a range of international to local as well as judicial and non-judicial mechanisms. From the 1990s when the term was popularised (Ohlin, 2007), TJ has grown exponentially with a large and committed base. However, as argued by Hinton, (2010) TJ still needs to become more meaningful at the local level to grapple with the complexities existing

at such localities. More research and practice would be vital in exploring how TJ is experienced, perceived and conceptualised at the local level as these responses have significant impact on the overall outcome of specific mechanisms.

Despite the various arguments in favour of individual mechanisms, there is a strong dominance on criminal prosecutions considering the amount of resources injected into running the trials. However, trials can only accommodate a limited number of perpetrators. They also focus on individuals who bear the greatest responsibility for the atrocities and these may not necessarily be the local level perpetrators whom victims have witnessed wrecking the havoc. The *Gacaca* experience has so far stood out as a community based court that managed to try a large number of perpetrators but its legacy has remained clouded as a result of the criticisms levelled against, particularly in its treatment of the accused, the interaction between the victims and perpetrators and the truth that has emerged out of the process (Funkeson, Schröder, Nzabonimpa, & Holmqvist, 2011; Ingelaere, 2009). Furthermore, the issue of reparation in *Gacaca* was not comprehensively addressed and while positive reparative effects, particularly in symbolic measures such as acknowledging the truth and finding the remains of their loved ones have been registered, a holistic reparation measure was not included and the implementation of the property related cases has remained complex (Bornkamm, 2012; Brouwer & Ruwebana, 2013). In both the *gacaca* and criminal prosecutions, reparations have not been a prominent issue although with the establishment of the ICC, the issue of reparations is being addressed through the Victims Trust Fund.

Institutional reforms as a TJ mechanism have on the other hand received less attention. It is commonly addressed within the framework of the general post conflict reconstruction and development agenda.

In the discussions on TJ mechanism, truth commissions create the impression of being one of the most comprehensive mechanisms, the middle ground between prosecutions and impunity, victim oriented with significant interaction with the perpetrators in establishing the truth and forward looking goals through proposals that seek to address the causes and consequences of the atrocities. The positive attributes elaborated by various scholars, practitioners and institutions have further popularised it into a widely recognized mechanism for dealing with the past. The strength of truth commissions has also been explained in terms of its interaction with other mechanisms, particularly reparation programmes to make it more meaningful for the victims and society. A key area within the truth commissions discourse that has

received significantly less attention is the post-truth commissions phase, precisely studies into the follow up and implementation of their recommendations. Whereas a number of them specifically concerning institutional reforms are incorporated within general post-conflict reconstruction and development programmes, some of them have scarcely been translated into action. The following section tackles this dilemma and discusses the truth commission recommendations with a specific focus on reparations for victims.

CHAPTER 3 IMPLEMENTATION OF RECOMMENDATIONS: POST-TRUTH COMMISSION

3.0 Introduction

According to Hayner (2011) one of the key outputs of a truth commission is the publication of the report containing the findings and recommendations. A key concern following their conclusion is the outcome of the various recommendations that they have proposed in the report. This chapter discusses the issue of implementation of truth commission recommendations with specific reference to reparation for victims. The main argument is that there has not been a concerted interest in studying how recommendations are followed up and implemented. As a result there is lack of a comprehensive framework for studying implementation. This chapter therefore presents an overview of how the implementation of reparations for victims have been approached in different cases and argues for a synthesised approach in which the implementation is not viewed as an isolated component but rather through a broader framework that takes into account the entire cycle of the truth commission and reparation programme. The first part discusses the status of the implementation of reparations in selected cases. The second part discusses the criteria that have been proposed in the TJ literature for analysing recommendations on reparations and in the third part, the proposed framework for studying the implementation of truth commission recommendations is introduced.

3.1 An overview of the Implementation of recommendations on reparation

When truth commissions make recommendations, the target government will likely respond in one of three ways; implementing all of the recommendations, implementing some of the recommendations or implementing none of the recommendations (www.truthcommissions.org, 2012). According to Roht-Arriaza (2004), despite the emphasis on availing reparations following mass atrocities, few have actually been paid. Reparations have either been partially paid, delayed or plain ignored. In a number of cases, the government has shown willingness and commitment to work towards the implementation of the recommendations, particularly where it involves reforming institutions and laws that were party to and facilitated the violations. The option of implementing some of the recommendations leaves the governments with the dilemma of selecting which ones to prioritise. This is not an

enviable position considering that in many transitioning societies, the incumbent government is faced with various competing demands.

In general, implementation of recommendations has remained weak, garnering little government and public attention. Nevertheless, in cases where the recommendations have been proposed within the context of government reconstruction efforts, such as institutional reforms, there is a tendency to absorb them within the general reconstruction efforts. Reparation however is much more complex as it targets a specific category of citizens over an entire population but it also requires extra effort and resources from the governments to realise its implementation.

Some of the more successful cases of implementation have included the programmes in Morocco, Chile and Argentina (Hayner, 2011). As seen in the ensuing discussion, despite the successful implementation, the programmes continued to face a number of criticism. A recurring feature in these cases however is the political commitment and sustained advocacy locally and internationally to ensure that the recommendations are implemented.

In Morocco, following the frustrations voiced after the stand-alone reparations programme of the Arbitration Panel, an advocacy for a truth telling body was launched which resulted in the Equity and Reconciliation Commission (IER). It was mandated to investigate the forced disappearances and arbitrary detentions, decide on the pending reparation requests and determine responsibility for the atrocities. It proposed a comprehensive reparation programme including individual, collective, material, symbolic and social service benefits. In 2006, a year after the release of the report, the individual compensations started to be paid which was concluded in 2007. The facilitation of the medical needs highlighted and recommended by the commission was also carried out such as free long term medical care and vocational training. Communal reparations were also carried out for regions that were identified as targets for systematic violations, those that were excluded and marginalised and where secret detention centres were located (Hayner, 2011; Human Rights Watch, 2005; International Center for Transitional Justice, 2009; National Commission for Truth Justice and Reconciliation, n.d.; Opgenhaffen & Freeman, 2005). The IER has however received harsh criticism particularly on its limited mandate and its hesitation to identify the perpetrators. The Advisory Council on Human Rights (CCDH) tasked with following up and implementing the reparation programme has also faced claims about the lack of transparency and equity of the reparation programme as well as the inability

of beneficiaries to appeal the decisions regarding their cases (Amnesty International, 2010). Amnesty International in fact considers it an incomplete process where *“the full truth in all cases of enforced disappearance has not been established, that justice has not been addressed and that adequate reparation for all victims of human rights violations has not been awarded”* (p. 6). As such the victims are likely to remain frustrated and there are no guarantees against further human rights violations.

In Chile, a truth commission was established in 1990 to investigate human rights violations under the Pinochet regime (Bram, 2005; Ensalaco, 1994; Ferrara, 2014; Vasallo, 2002). Later in 2003, it established a commission of inquiry to supplement the work of the 1990 commission, specifically to document abuses during the military dictatorship that had been excluded by the first commission. Both the National Commission on Truth and Reconciliation (1990) and the National Commission on Political Imprisonment and Torture (2003) both recommended reparation. The 1990 commission recommended restoration of good names, symbolic measures, legal and administrative procedures and access to specific social welfare services for victims (Report of the Chilean National Commission on Truth and Reconciliation). A National Corporation for Reparation and Reconciliation was established to follow up and implement the recommendations. A pensions plan was instituted as well as programmes to implement the educational and health benefits (Hayner, 2011; Lira, 2006). Despite the accomplishment of this programme, the process was criticized among others for its exclusion of survivors of torture or illegal imprisonment. This led to the establishment of a second commission which also recommended reparation comprising of educational and health benefits, pensions, symbolic measures and individual material reparations (United States Institute of Peace, n.d.-a). Following this new development, a reparations law was also passed and the government put in place measures to carry out the reparations provisions (Hayner, 2011).

The National Commission on the Disappearance of Persons (CONADEP) in Argentina was established in 1983 to investigate the disappearances and human rights violations during the military dictatorship (Crenzel, 2008). It proposed general recommendations on reparation in relation to economic assistance, scholarships, social security and employment assistance (Guembe, 2006; Hayner, 2011). Prompted by the cases in the Inter-American Commission of Human Rights in which substantial sums were awarded for the petitioners, similar benefits were extended to all political prisoners and exiles. Through the 1994 reparations law these benefits were also passed on to the families of those who had disappeared or been killed. The Argentina

case, although controversial following claims by groups such as the Mothers of the Plaza de Mayo, committed considerably large amounts to pay the beneficiaries (Hayner, 2011).

A common feature in the above cases is the enactment of legislation to facilitate the process. A follow up body was also established in each of these cases to continue the work of the commission in investigations as well as to follow through on the reparation programmes. A more critical factor however is the political will to institute the said reparations programmes. The respective governments took a strong stance towards enacting the various legislations or availing the necessary funds to get the programme running.

The above are cases which could be considered 'successful'. Hayner (2011) for instance refers to their reparation programmes as being "robust". Despite the methodological and outcome oriented criticisms against these commissions, they strove to implement the reparations in a timely manner (with the exception Argentina where it took at least seven years before the reparations was implemented) and as close to what was recommended as possible.

In some cases however, the report is either ignored or resisted. The Liberian government for instance showed extreme resistance to the report of the truth commission and largely ignored the recommendations. One of the antagonising recommendations was proposing sanctions and prosecutions for certain individuals and firms. Among those listed is the president, Sirleaf Johnson with 47 others. It was recommended that they be banned from holding elective or appointive public office for 30 years and those already in such positions to complete their tenure but remain ineligible in the future (Aning & Jaye, 2011). A Supreme Court ruling on the recommendation to bar individuals listed by the commission from holding public office as unconstitutional and violation of the individuals' right to procedural due process further ostracised the report recommendations (Williams vs Tah, 2011). The fact that the president, Sirleaf Johnson and other powerful actors were on the list of perpetrators proved to be a hindrance towards implementation (Aning & Jaye, 2011).

For some countries, either a few aspects of the recommendation or modified versions are implemented. In Peru, despite the extensive recommendations on individual and collective recommendations, the government instituted a programme that focused only on community reparations (Laplante, 2007; Laplante & Theidon, 2007). As will

be discussed further on, in Ghana there was a strong focus on monetary payments over non-financial measures such as symbolic reparations (see 8.4.4). Meanwhile in Sierra Leone, the financial requirements and the lack thereof made it impossible to institute a programme as described by the commission. Monetary payments were made to the victims under urgent interim measures in place of providing accessibility to critical social services as recommended by the commission (see 9.4.5). Similarly, in South Africa, the final programme fell far short of the expectations when only one-off payments were made to the beneficiaries in place of the six years payment scheme with amounts much lower than was recommended (Bray, 2014; Hayner, 2011).

In general, the follow up processes have been less sensational than the actual commission proceedings which attract substantial media, civil society and in cases with considerable international presence, international coverage and following. However, there has been limited examination, both scholarly and non-scholarly on the implementation of the recommendations, particularly on reparations (Laplane & Theidon, 2007). An exception to this limited examination is *The Handbook of Reparations*, a classic in reparation research. It includes at least five cases of reparations following truth commission recommendations. It also covers reparations in other contexts such as for historical crimes, terrorism, world war crimes and the international compensation scheme under the UN Compensation Commission (de Greiff, 2006c). A number of other authors have also addressed issues around the implementation of reparations however mainly focusing on factors which have either hindered or facilitated the process. De Feyter, Parmentier, Bossuyt and Lemmens' (2005) *Out of the Ashes: Reparation for Victims of Gross Human Rights Violations* is also an exceptional compilation focusing on the general reparation theory with some specific cases on truth commissions and reparation.

Specific to the implementation of recommendations of truth commissions, a team of scholars are currently engaged in an ongoing project on processes around the formulation and implementation of truth commission recommendations. The project is however limited to Latin America and is focused on processes that shape the truth commission recommendations and the conditions that impact the implementation. (Skaar, Garcia-Godos, Wiebelhaus-Brahm, & Martinez, 2014).

Research on implementation of reparations following truth commissions have in general been discussed from two main angles. The first discusses strategies adopted during the designing of the reparation programmes that could maximise the possibility

of their implementation. The second angle analyses the features that impact on the implementation of reparation programmes. Both approaches are elaborated in the following section. Drawing on these two approaches, I propose a third angle for studying the implementation of truth commission recommendations on reparation that synthesizes both the design strategies and the features that impact implementation. This approach frames the implementation process not in isolation but rather as a component of the whole process from conception to the actual or intended realisation of the goals.

3.2 Design criteria for enhancing the implementation of reparation following truth commission

In the analysis of reparation arising out of truth commissions, some authors such as Roht-Arriaza (2004), de Greiff (2006) and Magarrell (2007), among others have focused on identifying features that can be incorporated when designing a reparation programme to maximise its success. The focus of these discussions is on the frameworks within which to design the reparations recommendations to maximise accessibility and availability.

de Greiff's (2006) framework for key issues to take into account when designing a reparation programme is one such case. The "taxonomy" answers several fundamental questions to be considered in the design phase which should ideally lead to a comprehensive programme as indicated below (de Greiff, 2006a, pp. 5–13):

- i. Who are the beneficiaries? (*Scope*).
- ii. How does one ensure the programmes reach the intended beneficiaries? (*Completeness*).
- iii. Does a programme include the complete range of violations or victims? (*Comprehensiveness*).
- iv. What is the range of benefits that a reparation programme provides? (*Complexity*). A complex programme avails a broad category of benefits thus responding more closely to victims' needs while a 'simple' programme may focus on limited benefits.
- v. How do the different benefits support each other to maximise their value to the victims? (*Internal coherence*) e.g. apologies to be offered together with monetary awards. What is the relationship between the reparation programme and other TJ mechanisms? (*External coherence*).

- vi. Is there a possibility of pursuing other means for civil redress after receiving the reparation benefits? (*Finality*).
- vii. What are the amounts provided for in the reparation and the significance of such an amount and what does it mean to the victims? (*Munificence*).

The classification provides a systematic methodology for not only the design of reparation programmes but which could also be significant for studying the implementation of such processes in cases where actual implementation occurred.

Similarly, other authors as discussed below have also raised arguments concerning the design of reparation programmes and have identified characteristics that could strengthen the reparation programmes. In the following paragraphs, I group these characteristics into four main themes; context, content, policy strategy and institutional backing. In their discussions, they also address some of the key issues de Greiff (2006) suggests in his taxonomy. In this case, I highlight these similarities and whenever appropriate I will refer to de Greiff's taxonomy in italics and/or brackets.

3.2.1 Context

Understanding the context refers to being perceptive of the general setting of the location where the reparation programme is to be carried out. Roht-Arriaza (2004) has for instance argued for understanding the characteristics of the victims, an issue raised by de Greiff (2006) under *scope* of the programme. She has pointed out that in general, reparations have fared better in instances where there is an easily identifiable set of victims, relatively smaller number of victims and where violations have been committed by state security forces against unarmed opposition, than in post-civil conflicts involving fluid perpetrators and victims Roht-Arriaza (2004).

Circumstances which might facilitate implementation may be as diverse and abstract as political will or it could be concrete as the availability of resources to implement the said programmes. It therefore is important that the programme designers possess an insight into what may or may not work.

Hamber (2000) and Schotsmans (2005) similarly emphasise the processes that lead up to the reparations. Hamber (2000) posits that reparations are shaped by processes which feed into each other and are instrumental in the overall outcome of the reparations agenda. Between the granting of the reparations and the actual delivery,

quite a considerable effort goes into processes such as ensuring a reparations discourse and creating alliances and relationships. The emphasis has particularly been on local ownership with the predominant principle being that it is the beneficiaries who know best their own needs. As such, reparations programmes should preferably be managed by victims and consist of bottom-up processes with large consultation of victims' organisations (Schotsmans, 2005).

Basing on this criterion, a conducive atmosphere for reparations should be cultivated to ensure that there is acceptance both at the local and top levels. At the local level to guarantee that there is no friction when a specific group is entitled to certain benefits and at the top so there is both the will and the necessary resources made available (*completeness*).

3.2.2 Content of the recommendations

The content of the reparations is focused on what needs to be contained in reparations (*complexity*). As earlier discussed (*see* 2.2.3), reparations can comprise of a number of benefits ranging from material to symbolic, from individual to collective. It could also come in the form of service packages or development projects. The way it is framed may have certain advantages but also set backs (de Greiff, 2006a).

Roht-Arriaza (2004) has for instance argued for the framing of reparations as development. The rationale for reparations as development arises from the observation that even before the conflict, the situation in most communities was deplorable, with poverty and inadequate services and infrastructure. Conflict further compounds this state of affairs. Economic and social development in post conflict societies thus becomes one of the top priorities and inevitably competes with other post-conflict reconstruction efforts, reparations inclusive. A further argument is that post conflict governments often approach these two elements of reconstruction and transitional justice efforts as two separate entities and yet in reality they could be integrated and built into the other (Roht-Arriaza & Orlovsky, 2009). More significant however is that by framing reparation within development, it allows the state to provide adequate reparations to a large number of victims (*completeness*) (Correa et al., 2009).

By integrating reparations into the reconstruction and development agenda, societies and governments are able to address one of the shortfalls of reparation programmes,

that is, failing to achieve priority status in government discourse and, at the same time achieve the forward looking aim of development. Commissions in Sierra Leone, Liberia, Ghana, South Africa and Kenya among others all included components of service delivery as part of recommendations.

However, the argument against framing reparations as development is that reparations and development are two separate responsibilities of the government. The objectives serve distinct purposes to the different targets and beneficiaries. Whereas it is possible to frame reparations around development, caution has to be taken to ensure that they do not overlap and as aptly put by Roht-Arriaza (2004, p. 8), the government ends up doing “what it is already obligated to do in its capacity as tax receiver and public works provider [and] slap a ‘reparations’ label on it, and get off cheaply.”

One way to ensure there is no overlap and at the same time integrate development and reparation is in exercising preferential access in atonement and reparations Roht-Arriaza (2004). She considers this one of the approaches to ensuring implementation is carried out and it basically focuses on prioritizing victims. With large numbers of victims afflicted with differing levels of victimisation and vulnerability, providing preferential access of services and public goods to victims contributes to the recognition of their extraordinary suffering. This approach compliments the reparations as development in that for instance, if free access to education is part of reparations, the development component would cover the construction of a school, making it accessible to all. Reparations would involve giving preferential access to victims by provision of scholarships or scholastic materials or low-cost education and training to victims by virtue of their victimhood. A similar logic can also be extended to other services such as health, housing, transportation and the like.

Roht-Arriaza (2004) points out that the underlying rationale is in repairing individual harms. It focuses on benefits of significant value to survivors like health and education while avoiding the controversial monetary compensation and, it does not conflate the state’s responsibility to provide infrastructure and public services with its responsibility to repair harm. Magarrell (2007) however cautions on framing reparations as a hand-out. It should be on the basis of the victim as a right holder and it is on this basis that they are awarded the said reparation.

de Greiff (2006) however points out that whereas providing reparations as development and social investment has potential benefits, it does come with

disadvantages. It has a low reparative capacity, focuses on basic needs, targets community as opposed to individuals, is a long term programme and can easily become influenced by partisan politics. And even when they are framed as service packages, there is likelihood that they will be interpreted as a right accorded to them as citizens rather than as victims. This line of argument perhaps stems from the conception of reparations as a “tangible manifestation” of acknowledgment of the harm and a recognition of the status of victimhood. For many victims however, the packaging itself is non-consequential and what matters is what they are getting, and all the better if it happens to improve their current position, whether it is financial or access to a particular service. The onus therefore falls on the designers and implementers of the programme to frame it in such a manner that it meets the values of reparation (*munificence*).

Another approach, also proposed by Roht-Arriaza (2004) is in framing reparations as community-level acknowledgement programmes. These are measures that could contribute to truth, justice and acknowledgement and have a strong symbolic impact such as apologies (*internal coherence*). Atonement and acknowledgement from perpetrators at community-level can be powerful and especially valuable where victims and perpetrators have to live together following the conflict. Practical cases she highlights are Rwanda’s *Gacaca* and reconciliation exercises in East Timor which strive to give satisfaction to the victims by providing a semblance of justice, truth, acknowledgment, apology and repayment. A basic assumption here would be that victims and perpetrators are willing to participate in such ‘reconciliatory’ processes which may not necessarily be the case. Moreover, the examples she highlights are inclined towards programmes that provide reparative benefits. As such, it would be useful to explore what these programmes mean to the victims and whether they perceive them as meaningful and beneficial in a similar context as programmes that would avail more material benefits.

3.2.3 Policy strategy of reparations

Magarrell (2007) suggests four critical aspects that need to be considered when designing a reparation programme: First, the designers need to determine what kind of reparations are to be provided (*complexity*). As previously discussed, there is a wide range of processes and benefits and this diversity calls for clarity on what exactly will be provided. This decision can be resolved by first, classifying the type of harm and secondly, a characterisation of victimisation (*comprehensiveness*) (Rombouts et al., 2005).

Secondly, the beneficiaries of specific reparation measures need to be clearly identified and defined (*scope*). Often, it is not possible to award the said benefits to all the individuals that may consider themselves victimised. For instance, in the case of a post conflict society, the reality is that all individuals might have suffered harm in one form or another. Designing a reparation programme with the entire population may turn out to be overwhelming for a fragile post-conflict state. In these contexts, some individuals however suffer more harm than others and continue to face negative consequences as a result of the harm. The most logical way to meander through this would first be to describe the entire spectrum of victims and then narrow that down by identifying various classes that are eligible for specific measures of reparations, usually basing on the type of violation suffered (*comprehensiveness*). These criteria should be enshrined in fairness and feasibility (Magarrell, 2007). The benefit of narrowing down victims is that by creating different categories of victims, this process can inform the type of reparations most beneficial to a particular category of victims.

Third is the need to define priorities. This is crucial in determining which particular victims and benefits to start with. Whereas every individual may have been victimised, some are more disadvantaged as a result of their harm. In the case of amputees in Sierra Leone, the victims were even further narrowed down to single amputees versus double amputees, upper limb versus lower limb and so forth. Each category of these amputees faces specific challenges in addition to the collective challenge they face as amputees. Although it is not the official policy of the government and reparations agency to distinguish between the different levels of amputation, while in conversation with the amputees, they were acutely aware of these distinctions and how the level of amputation has impacted on their productivity. Magarrell (2007) also cites the case of the East Timorese women who were raped by the Indonesian occupying forces and bore children of mixed decent as being a category that deserves special consideration. Both the women and children were shunned and discriminated against by the community

Fourth, reparation programmes need to pay attention to the overall process. These processes include participation, inclusion and clarity of reparations. Victim engagement should be ensured in the entire process. Participation entails engagement in all aspects of design, implementation and monitoring (UN Women & United Nations Development Programme, 2010). This includes not only taking part in the proceedings but also involves having a level of control over the proceedings (Rombouts et al., 2005).

Participation not only achieves the highest impact but ensures that the programmes are meaningful and timely. The reparation programme should be viewed by the rest of the population, notably the non-beneficiaries as fair and legitimate. This is especially critical where an entire country may have been devastated by civil war and entire sections are facing the same poverty and other disadvantages as specific victims. A reparation programme is capable of spurring criticism when it targets a specific group among an entire population facing similar disadvantages.

3.2.4 Institutional backing

Often, victims do not have significant power to influence decisions. There are certain exceptions such as the Argentinean Initiative Group for the Convention against Forced disappearances consisting of at least sixteen diverse organisations popularising the redress for forced disappearances using national and international legal instruments (Guembe, 2006). Similarly, the *Madres de la Plaza de Mayo* (The Mothers of the plaza de Mayo) became influential in the political discourse through their sustained activism. In Brazil, the *Comissão de Familiares de Mortos e Desaparecidos Políticos* (Commission for the Family members of the persons killed or disappeared for political reasons) were instrumental in collecting information about the dead and disappeared during the military rule (Hamber, 2009).

In most cases however, victims have no military, economic or political power and are therefore not a formidable threat to the sitting government. An option is a strong and well organised victims' organisation that can unify the victims, increase their negotiation power and articulate their needs (Schotsmans, 2005). An alternative as discussed by (de Greiff, 2006a) in *external coherence* is in structuring reparation programmes around other TJ mechanisms so they can complement one another and raise the overall output and value for the beneficiaries.

Hamber (2000, 2005, p. 142) talks about providing "ongoing space" for survivors to express their feelings of sadness and rage as they try to come to terms with their losses and harms. Civil society activism by and for the victims is one aspect of this 'space'. Other aspects to the concept of 'space' might include private and public mediums such as counselling, traditional ceremonies, media exposure, exhibitions, theatre and the like.

The above discussion identifies issues critical to reparation programmes. The limitation however is that it is restrictive in that it limits the study to the design aspects

of reparation. As I illustrate further on, implementation and implementation research consists of series of processes that range from policy conception to policy realisation. The design criteria would therefore be unable to present a complete framework to study implementation.

In the next section, I highlight key features that have been identified by a number of authors as relevant to the failure or success of reparation programmes following truth commissions.

3.3 Features that impact the implementation of reparation programmes

As elaborated further in the ensuing discussion, some authors have focused on analysing variables that are relevant to and impact the implementation of reparation programmes after the design phase. A number of these analyses originate from an assessment of the different programmes in specific cases. I have identified a number of recurring themes and discussed them below.

3.3.1 Resources

Reparation programmes require money and lots of it. Inadequate resources is often cited as a reason for which programmes have either stagnated or not achieved their full potential. The question of how reparation programmes are to be financed has however received little attention. Segovia (2006a) argues that there is an oversimplification of the process of mobilising resources for reparations. Whereas truth commissions may sometimes be able to suggest 'where' resources should be sourced from, they rarely talk about the 'how'. Colvin (2006) for instance points out that the South African TRC remained superficial on the financial requirements of the reparation programme with no suggestions on tangible guidelines or costs of specific programmes. There is an assumption that government will comply with the proposals but in reality this is determined by a complex socio- economic and political environment influenced by factors like political will, dynamics of mobilising resources and various demands on the government. Moreover, reparations occupy a precarious position in the political and economic agendas of transitioning societies, being that they are directed at a specific category of individuals and a reminder about an unpleasant past. Reparations may be side-lined or promoted depending on the socio-political and economic interests of different actors (Colvin, 2006; Segovia, 2006a).

Segovia (2006) identifies two models proposed by truth commissions regarding financing reparations: (1) the creation of a special fund to which resources are channelled, and (2) direct funding from public budget. According to him, the second model has registered more success. The special fund model has been constrained by inability to attract funds into it as he illustrates with cases such as El Salvador, Guatemala, Haiti, Malawi and South Africa. The expectations that a reparation fund will automatically be financed are simply wishful thinking as seen in El Salvador and a number of other cases.

A number of truth commissions have directed their proposals for the funding of reparation programmes to the international community, particularly for those who benefitted or were active in the settlement of the conflict to contribute to the reparations fund. The contribution could also be in terms of apportioning a percentage of international assistance towards reparation programmes. El Salvador recommended that one percent be set aside for this purpose (Segovia, 2006b) or as Liberia did, requested the diaspora to donate one US dollar a month to the Reparation Trust Fund (Truth and Reconciliation Commission of Liberia, 2009, p. 396). The international community has however been reluctant to bankroll a reparation programme despite verbally encouraging reparation endeavours. This reluctance stems from the acknowledgement of responsibility component and sensitive political decisions involved in reparations which the international community argues should be locally handled (United Nations, 2008). The UN however argue that the international community should rethink their stance and contribute to the reparation programme, particularly if they were involved in the conflict in the first place. Their role could be in terms of direct material support, technical assistance, local group support, pressure to multilateral institutions and governments, among others.

Irrespective of the funding sources, the respective governments play a significant role in the direction of resources for reparation programmes. More successful cases such as Argentina, Brazil, Chile and Morocco had the governments and various coalitions working in favour of the reparations (Segovia, 2006a) which has not been the case where the reparations have either not been implemented or not far reaching as envisioned by the commission.

3.3.2 The socio-political dynamics

Whereas funding for reparation programmes is critical, it is influenced by the prevailing socio-political dynamics. Reparation programme may or may not get funding based on whether the sitting government, political coalitions and pressure groups favour reparations. Chile, Argentina and Brazil had strong social and political coalitions favouring reparation. Notably, in Argentina, the government of President Menem, a former political prisoner set in motion reforms aimed at remedying the harms (Guembe, 2006). In contrast, such social and political support has been limited in El Salvador, Guatemala and Haiti (Segovia, 2006b). South Africa and Peru, although not experiencing a favourable government and coalitions in favour of reparations according to (Segovia, 2006b) have had far reaching reparation programmes. These two cases have however had a vibrant local activism and advocacy groups. According to Segovia (2006a), “effective implementation requires an interdependence of political forces and the formation of political alliances and coalitions among different sectors (domestic and international) with sufficient political strength and capacity to defend and move forward the programme” (p.162). In Haiti, the sitting government was generally weak, politically and economically and relied heavily on external support for whom reparations was unfortunately not a priority. The implementation of reparation therefore requires “a balance of political forces that favour such programmes” (Segovia, 2006b, p. 168).

Additionally, the profile of the victims can also influence the approach to reparation implementation. Argentina and Chile have had a more urban, middleclass with social and political influence victims as opposed to Guatemala and Peru where the majority are the rural and marginalised indigenous society with low social and political capital and located on the periphery (Segovia, 2006a). The way victims organise themselves and articulate their concerns as well as the pressure they are able to exert can be instrumental in bringing the issue of reparation on the agenda and is vital to the way that government responds towards the reparations. In El Salvador, which is notable for the non-compliance of the government, the reparation measures for handicapped ex-combatants happens to be the only one adhered to. According to Segovia (2006b), they organised marches, demonstrations and occupied public buildings to make their issue visible and they were perceived as a threat. Contrastingly, victim activism in South Africa does not seem to register the desired impact. Colvin (2006) however argues that despite their presence, reparation entered late in their discourse. Moreover, they have also not created a clear strategy and structure for how reparation needs to be done and

what it should entail. Victims and victims groups therefore need to hold considerable power to push their issues but also possess a clear structure of what the reparation entails.

3.3.3 Legislation

Following the CONADEP proceedings in Argentina, a series of reparation laws were passed reinforcing the earlier laws on reparation. Although the earlier laws were not directly linked to the CONADEP and as such did not “comprise an official reparations policy” (Guembe, 2006, p. 22), they were instrumental to providing the momentum for the reparations laws and their compliance. These laws were paramount in defining the amounts to be paid, the victim or beneficiaries, the procedures for accessing the payments as well as the responsibility for their payment. Brazil, equally has experienced a legislation driven reparation plan to redress human rights violations which have largely been complied with (Cano & Ferreira, 2006). Chile also enacted a reparations law that was key in the payment of pensions to the victims and their families as well as defining the functions of the National Corporation for Reparations and Reconciliation. The law proved to be useful, particularly to the victims groups in articulating their demands. In one instance, following the end of the National Cooperation for Reparation and Reconciliation, the Group of Families of Disappeared Detainees cited the law that recognised their right to know the final whereabouts of missing family members. This led to the enactment of a follow up programme to continue with the activities of Law 19.123. This law also guided the work of the Human Rights programme tasked with the symbolic reparations. Additional laws were also passed to modify the existing reparations law which adjusted certain benefits and beneficiaries. Additional laws have clarified the issues of groups such as returning exiles, political prisoners and those who were dismissed for political reasons (Lira, 2006).

As such, enacting supportive legislation can be instrumental in facilitating the implementation process. It communicates the support of the government as well as giving advocates a tool to make demands and hold the government and other parties accountable for non-compliance.

3.3.4 The context through which reparation emerges

The stage at which the issue of reparations emerges in the transition can also play a significant role in the responses towards it. Segovia (2006b) for instance explains that one of the reasons for the non-compliance of reparations recommendations in El Salvador was that reparations was not an issue during the peace negotiations but only emerged with the truth commission report. Both parties, the government and the rebel movement were therefore more concerned about the aspects of the agreement they had been most vocal about and that boosted their image, of which reparations was not one of them.

The tone adopted during the establishment of the commission therefore carries significant repercussions. Where reconciliation or truth have been the rallying theme, as is in South Africa, Sierra Leone or Ghana, among others, then coalitions following the establishment will evaluate their work based on whether these aims have been met. In the Latin American contexts, despite reparations being largely paid, there is still dissatisfaction because the emphasis was on truth seeking. As in Haiti (Segovia, 2006b), reparations did not feature in the South African negotiations but rather focus was on amnesty and reconciliation. And even when it did come up, there was an emphasis on the rehabilitative prospects of narratives in affording recognition and healing for the victims (Colvin, 2006). Colvin further argues that when reparations permeated the discussions, there were no details on the content or structure or eventual outcome until later in the process, during the drafting of the TRC Act.

3.3.5 The output of the report versus the regime in power

Where the report implicates a number of high ranking officials in the regime, it is unlikely that any action will be taken to comply as this in a way validates the accusations made by the commission. Liberia has seen no significant action regarding the report where the president and a number of officials have been named for further action. El Salvador also suffered the same fate where the report implicated the state functionaries for 95% of human rights violations against civilians. The recommendations also targeted the former guerrilla groups recommending actions such as a ban of ten years on political activities. This automatically alienated the groups who were attempting to reorganise into the democratic processes (Segovia, 2006b). A report that proposes recommendations that antagonises the status quo is therefore most likely not to be followed through.

Some of the proposals suggested to facilitate the implementation of reparation programmes have been more specific to one measure and theoretical such as integrating reparations into microfinance institutions (Seibil & Armstrong, 2006) or reframing psychosocial work to better reflect the social, historical and cultural dynamics (Lykes & Mersky, 2006). One key issue that is not strongly addressed by these authors though is the issue of resources, that is, where and how the money for implementing such programmes will come from. Even the best intentioned programmes have to grapple with this issue.

Implementation and availing resources for the implementation does require a concerted effort from different angles and sections of society. Segovia (2006a) for instance proposes for measures such as engaging various social and political groups committed to reparation to ensure sustainability. Perhaps a more radical approach to the question of resources for reparation would be for truth commissions to demand a binding commitment and an estimate of how much the government intends to dedicate to the programmes in order to frame their proposals around the already known funds.

From the above discussion, attempts to study the implementation of reparation have been limited. The first approach focuses on criteria that could increase the success of reparation programmes and emphasises the design aspects of reparation programmes. A focus on only the design aspects would however not avail a detailed structure of the implementation complexities because of its emphasis on only the design. Similarly, the second approach to studying reparation has focused on identifying features that have facilitated or hindered the implementation process. In cases where implementation has been looked at, there has not been an attempt to develop a systematic and generalisable methodology and criteria for studying the implementation process because the analysis has been done on a case by case basis as discussed in 3.3. Moreover, there is no clear definition of implementation or a criteria that would describe when or how implementation is taking place or not to guide such implementation studies in the context of truth commission recommendations on reparation. In the following section, I explore the idea of a systematic methodology for studying implementation of reparation by proposing a third-way that integrates focusing on both the design and the context in which a reparation programme is planned.

3.4 The third-way: An integrated approach to studying implementation of reparation following truth commission

Truth commissions after the completion of the hearings and investigations are mandated to produce a report in which they detail their findings and propose recommendations on a number of issues. The report normally signifies the end of the work of the commission. Following this, a key concern is what happens to the recommendations made by the commissions. It is usually left up to the incumbent regime to respond to these recommendations and experience has so far shown a mixed reaction to the recommendations with some regimes completely ignoring the recommendations to more positive responses. Similarly, interest from different stakeholders also tends to wane after the publication of the report. One area that has suffered from this diminished interest is research into the follow up and implementation of the recommendations that truth commissions make, which this study seeks to address with a focus on reparation for victims.

As discussed in the previous section, two approaches have been identified for studying the truth commission recommendations on reparation. The first approach has focused on identifying criteria that is relevant during the design of the recommendations. These seek to ensure that in the end a meaningful programme is designed. These include for instance de Greiff's (2006a) taxonomy of reparation programmes as well as scholars who have proposed different means to package the reparation programmes such as Roht-Arriaza (2004) and Magarrell (2007). The emphasis is in understanding the socio-economic and political setting of the society while designing the programmes. The second approach focuses on examining the factors that explain why the reparation programmes have either been implemented or not in different cases. These authors have therefore identified features that influence the implementation of the programmes.

The limitation with both these approaches is that they are limited to addressing specific aspects of the implementation process, either the design or execution of the decisions, thereby treating these as two separate components rather than complementary processes that feed into each other. Moreover, a clear definition for implementation in these contexts has not been explored. As such there is not a systematic framework for studying the implementation process.

Therefore, a third approach to studying the implementation of the recommendations for victims' reparation following truth commissions is proposed. The basic assumption to an integrated approach is that implementation is not an isolated activity but rather a process that takes into account the totality of experiences from the design to the expected output. Such methodology to studying the implementation would look at three aspects; the pre-design, the packaging of the reparation programme and the prevailing circumstances under which the implementation is being carried out.

The first aspect explores the circumstances that facilitated the setting up of a truth commission and their inclusion of reparation in their recommendation. The choices that determined first the selection of a truth commission mechanism and secondly the inclusion of reparation as a focus can have a significant impact on the implementation process. Was the truth commission a concession in a peace negotiation and how much did it feature in the deliberations? Or did it arise out of either domestic or international pressure? Was it an elitist decision or locally driven? Similarly, how were the initial questions of reparation handled in the framing of the truth commission? Did they even feature at all or were they a late introduction? What were the views of the different stakeholders towards reparation?

The second aspect analyses the content of the reparation proposal. As discussed in 3.2, several variables have been proposed which are considered vital to the design of a reparation programme. How however do the proposed reparation programme measure up to these variables and does this have any significant impact on the output in terms of implementation?

The third aspect explores the social, political and economic structure of the implementation. It compares what is happening vis-à-vis what should have happened. It analyses the responses of the various stakeholders and seeks to answer why the implementation is happening the way it is, thereby discussing the features that have impacted the follow up and implementation process.

Such an integrated approach portrays reparation and its implementation as a complex programme. By limiting the study to only one or two aspects, it gives an incomplete picture. A number of truth commissions in defining what features of reparations to propose are quite sensitive to the issues discussed in the design criteria but this attention to detail is not necessarily translated into implementation. Similarly, it would be futile to analyse the decisions that go into how and why a reparation programme is

either implemented or not without linking them to the pre-design and design dynamics.

An integrated approach would therefore offer a clearer picture of the complexities that go into implementation as well as an understanding of where and how loopholes in the implementation occurred, and to even stretch it further, opportunities to rectify setbacks. This approach is further analysed in chapter 7, following a discussion of the background of the case studies.

Conclusion

Scholarly approach to analysing what happens after the truth commission proceedings has remained low key. Many of these studies have been limited to issues such as victims' perceptions of the whole process or whether truth commissions have been able to meet the goals of variables such as reconciliation, truth, healing, democratisation and rule of law among others. One of the main legacies of a truth commission is the recommendations that they make on various issues in their reports. However, rarely are there follow ups into the outcome of these recommendations and neither is there a systematic framework for studying the follow up and implementations. On the one part, there are scholars who propose criteria that truth commissions could incorporate in proposing comprehensive reparation programmes. These have focused on the design aspects. These criteria have however hardly been empirically tested against the reparation recommendations. On the other hand, some scholars have assessed how the implementations have been carried out and identified features that have either facilitated or hindered the implementation in specific cases. A focus on the design aspect alone would be inadequate. Similarly, focusing only on the implementation structure excludes the dynamics that went into designing the programme as well as the reasons for why things are the way they are.

In this dissertation, I propose a synthesised approach which considers the entire lifecycle of reparation. It analyses first, how reparations were included in the TJ framework of the country, second, how the commissions were able to arrive at a specific set of recommendations for reparation and third, how various stakeholders have responded to the recommendations and what the consequences of their actions have been to the implementation process.

In the following chapters, I focus on developing this approach. Consequently, the next chapter will explore the linkages between criminology, a field specialised to understanding crime and its consequences and TJ, a newer field with a focus on the responses to international crimes. The assumption is that criminology which has been in existence much longer than TJ has encountered similar mechanisms of truth telling and reparation and it is worthwhile to explore how these mechanisms have been dealt with in criminology, specifically in the implementation aspect in order to identify features to include in the framework for studying the implementation of truth commission recommendations on reparation.

CHAPTER 4. CRIMINOLOGY, TRUTH COMMISSIONS AND REPARATION

4.0 Introduction

The intersection between TJ and criminology is limited despite both being occupied with understanding crimes. It is only recently that criminology is breaking out to cover such atrocities despite international crimes being a fixture in much of the previous and present century. Similarly, TJ scholars are branching out to explore how to understand international crimes from criminological perspectives (Drumbl, 2003; Haveman & Smeulers, 2008; McEvoy, 2007). The chapter contributes towards advancing the linkages between TJ and criminology and concurs with the idea of broadening the understanding of TJ mechanisms and international crimes from a criminological perspective and vice versa. In that regard, I focus on three aspects; first, the contentious relationship between the two fields and the move towards synergising them; second, the definition of international crimes from a criminological perspective; and third, the notion of truth seeking and reparation in criminology and what it can offer to the field of transitional justice.

4.1 A fragmented intersection

“War crimes, crimes against humanity and genocide have for long been almost totally neglected by the science that studies crimes, the situation in which these crimes take place, possible interventions to stop these crimes from being committed and the efficacy of the interventions: criminology. Criminology lives in a state of denial when it comes to these large scale, widespread and systematic committed atrocities” (Haveman & Smeulers, 2008:26).

The above quote succinctly summarises the intersection between international crimes which is at the core of transitional justice and criminology. This divide between criminology and TJ is puzzling considering that criminology is principally concerned with studying crimes and international crimes present some of the most shocking criminal acts.

As pointed out earlier, the concept of TJ emerged during the transitions in Latin America, principally as a response to deal with large scale and systematic violence and human rights abuse. The magnitude of the violence also attracted an international response to these atrocities, an approach referred to Teitel (2003) as the displacement

of national justice by international justice. However, as pointed out by Mullins & Rothe (2008) and a number of other scholars, criminology has for the most part focused on national or conventional crime and on the nation-state. Referring to it as 'retail street crimes,' Mullins & Rothe (2008, p. 138) assert that "most organizational criminology has ignored the social forces and incipient social structures occurring within the international realm in favour of focusing on the state itself." Consequently, there has been little attention paid to violations of international criminal law (Rothe & Mullins, 2009).

In Haveman & Smeulers (2008), one of the reasons for this deficit of criminology in international crimes lies in the rigid definition, contextualization and criminalization of crime. They stress that in a restrictive interpretation where the state determines what is punishable and what is considered a crime, it becomes problematic extrapolating this to a broader arena more so when crimes also implicate states as perpetrators and the criminals are no longer the deviant, 'problematic' individual(s) but sometimes the ordinary and conformist members of society. Ironically, some of the worst atrocities are meted out by the state and dwarf the magnitude of ordinary crimes to the extent that new terms have had to be invented to refer to such crimes such as 'murders' becoming 'genocide' (Watts, Bessant, & Hil, 2008).

The dynamics of international crimes are also more complex and challenging which may limit the application of traditional research methods (Bijleveld, 2008; Haveman & Smeulers, 2008). Other reasons cited for the limited inclusion of international crimes include the fact that the field of criminology has been dominated by mainly western criminologists while the havoc wrecked by international crimes have been too far away from their realm to attract significant attention (Haveman & Smeulers, 2008). A significant amount of violations of international criminal law leading to the perpetration of war crimes and crimes against humanity occur in Africa (Mullins & Rothe, 2008) while most of the scholars are based in western institutions. In contrast, the number of African criminologists is dismal, and many of them are based in Western institutions. A quick review of criminology focused journals in Africa only further highlights this deficiency. In the nine volumes of *The African Journal of Criminology and Justice Studies*, only two articles are linked to international crimes, Muwereza's (2011) piece on the conflict in Northern Uganda and Tamfuh's (2008) on the International Criminal Court (ICC). while the *African Journal of Law and Criminology* has one article related to international crimes. The more vibrant and perhaps oldest *Southern African Journal of Criminology* hardly refers to such crimes as well.

On an academic level, there is a limited interaction between criminology scholars and scholars and practitioners of TJ despite being able to draw specialists from similar fields like law, political science, sociology, psychology, and others. However, this is a challenge being confronted by a section of criminologists and TJ scholars who are bridging the gap and exploring the dynamics of international crimes and the frameworks for their resolution from a criminological perspective.

In fact, one of the significant aspects of McEvoy's (2007) paper discusses the limitations encountered by defining and rationalising TJ from a legalistic perspective and suggests approaching TJ from a criminology viewpoint because of the 'Interdisciplinarity' of criminology. He further argues that criminology is equipped with a number of attributes for developing a broader understanding of TJ and provides a helpful framework in asking both practical and philosophical questions about TJ and the notion of crime.

This criminological approach has been defined by Haveman & Smeulers in their 2008 publication as "supranational criminology" or "the criminology of international crimes" comprising of the study of war crimes, crimes against humanity and genocide as well as the mechanisms for addressing such atrocities. The study also includes analysing the behaviour of actors, causes and possible interventions and their effectiveness (Haveman & Smeulers, 2008, p. 26). In this publication, several authors contribute towards popularising the concept of supranational criminology. They address the diverse features, dilemma, methodology and direction it could take as a specialised unit of criminology focusing on international crimes.

Despite the limited intersection between criminology and TJ, a number of scholars (Friedrichs, 2008; Karstedt & Parmentier, 2012; Parmentier, 2003, 2011; Parmentier & Weitekamp, 2007) have argued that criminology offers specialised knowledge of crime, criminality and criminals and this knowledge can come in handy when studying the origin, progression, manifestation, implication and resolution of international crimes. Haveman & Smeulers (2008) also point out that criminology can actually benefit from this involvement by applying and testing the traditional theories on crime and criminological research methods to international crime. In the editorial to the European Journal of Criminology Special issue on Atrocity Crimes and Transitional Justice, Karstedt & Parmentier (2012) further argue that despite the limited involvement of the field of criminology in understanding mass atrocities, criminological research can contribute to understanding of international crimes and

serious violations of human rights. Its “multiple theoretical frameworks and extensive methodological tool boxes” can particularly be insightful in understanding the changing landscape of mass atrocity crimes and the various strategies and mechanisms of TJ (p. 465).

4.2 A general understanding of criminology and international criminology

To a non-criminologist, reference to criminology elicits the depiction of an expert in crime, someone well-versed in understanding and solving crime. Criminology also appears to be entrenched in fields related to police, prisons or law. Such bewilderment about criminology is not only limited to non-experts. As a field of study, criminology is a multidisciplinary discipline that is still delineating its boundaries. Loader & Sparks (2012, p. 10) for instance argue that it has “a subject matter but no unique methodological commitment or paradigmatic theoretical frameworks”. However, one starting point for understanding criminology is in the definition of what constitutes a crime since crime happens to be its focal subject matter. But even then, defining crime itself is also problematic.

Watts et al., (2008) for instance have argued that the definition of crime is debateable and as such, there is no universal definition. “Crime is not always obvious, objective or simple” and what may be considered criminal may at a point in time be sanctioned behaviour and looked upon as “desirable for the functioning of that form of society” (p. 15). Female genital mutilation for instance is regarded as criminal in the legal context in many societies but still condoned and practiced locally and those who practice it do not necessarily view it as criminal. In this way, crime can not only be looked at as something that has been labelled as such but rather requires a more unrestricted interpretation.

Similarly, the definition that crime is what is prohibited by the criminal justice systems is problematic. There is no universal uniformity in the criminal justice systems to properly sanction criminal activity and the criminal justice systems vary across jurisdictions, states, continents and regions. Furthermore, a universal definition of crime misses out on the societal perception of crime and what is considered as anti-social behaviour.

A more objective approach to crime has been to view it as “whatever society said it was” (Watts et al., 2008. p.16). The authors, however, counter argue that such a liberal definition has the danger of being abused if crime is to be determined by a social group and may lead to stringent restrictions and lack of consensus on behaviour which might

be considered anti-social such as euthanasia, abortion and homosexuality, among others. Following their analysis, they do not offer a definition of crime or criminology but rather stress on the need for thoughtfulness and thinking outside the box while researching on crime and criminology.

Similarly, the understanding of international criminology, either from mainstream criminology or TJ is still developing. The first striking aspect to international crimes in criminology is the absence of the theme in numerous criminological writings. Yacoubian's (2000) analysis of the content of the American Society of Criminology and other journals for reference to the crime of genocide is often cited to back the limited attention to international crimes. Likewise, the yearly European Society of Criminology conference is dominated by topics related to other crimes besides international crimes although there has been a rise in presentations on international crimes through the efforts of the European Criminology Group on Atrocity Crimes and Transitional Justice (Karstedt & Knust, 2014).

On the other hand though, criminologists have recognised that crime and criminal activities is not something that only impacts at the micro level and as such, attempts have been made to relate the everyday criminal activities to the overall stability of a country. Karn (2011, p.69) for instance points out that there is a growing recognition of the "impact of everyday violence on a countries' prospects for economic growth and development" leading to a focus on violence and crime prevention for development. This observation is also relevant for transitional justice where there is a growing emphasis on linking transitional justice and development (de Greiff & Duthie, 2009) as a more holistic approach that addresses structural antecedents of a conflict and as a forward looking framework for creating conditions that would limit the recurrence of the conflict. Karn (2011) however questions the appropriateness of using the same frameworks in both the south and north which have more established institutions for crime studies. These debates are however limited to the more conventional crimes rather than international crimes. The context in which crime occurs and its impact at both the micro and macro level tend to be unique to the dynamics in a particular case.

Maguire, Morgan & Reiner's (2012) *The Oxford Handbook of Criminology* is one of the more progressive publications that avails a comprehensive discussion of both theory and practice in response to crimes both within a state and the broader implications of crimes. It incorporates crimes such as drug trafficking, white collar and corporate crime and terrorism. However, it is significantly silent on discussion of international

crimes in the context of atrocity crimes. The exception in the compilation is Green & Ward (2012) who deliberate on international crimes though within the context of state crimes. Similarly, books such as the *International Handbook of Criminology*, (Shoham, Knepper, & Kett, 2010), *Introduction to Criminology: Why Do They Do It?* (Schram & Tibbetts, 2013), *Criminology*, (Newburn, 2007), *Understanding Criminology: Current Theoretical Debates*, (Walklate, 2007), *Criminology: Theory and Context*, (Tierney, 2009) and *Key Readings in Criminology*, (Newburn, 2009), among others have none to a couple of chapters addressing international crimes.

Reiterating scholars such as Mullins & Rothe (2008), Rothe & Mullins (2009) and Haveman & Smeulers (2008), some scholars have maintained that the issues covered in international crimes appear not to be a priority at the international scene. A case in point is Zhang (2011) who in *The Routledge Handbook of International Criminology* identifies the most pressing matters in international criminology as being generating focus on the international criminal system, particularly the UN agencies on crime and crime prevention of international crimes and transnational crimes, and, the advantages of cross national studies into crime and criminal behaviour. His discussion however limits these crimes to trafficking, cybercrime, identity theft and organised crime and criminals. Joutsen (2011) similarly discusses the impact of UN crime conventions on international cooperation but the focus remains on drug trafficking, organised crime and corruption. Redo (2011) further argues that the criminological research in UN is largely directed by the interests of the member states. As such, the direction of the research is determined by among others, the interests of the member states, funding and NGO agendas and international crimes do not seem to be a priority. An exception in the publication is Rhea (2011) who focuses on international crimes in the context of genocide, war crimes and crimes against humanity and discusses the response to such crimes with focus on criminal prosecutions notably through the national, hybrid, multinational and international criminal courts. He traces an overview international crimes and points out that they have evolved from largely national prosecutions to concerted international and multinational responses to such crimes.

The general idea about international criminology is that it by and large involves integrating an international perspective in approaching crimes. It could either be by comparison of a number of case studies or crimes whose implications spill beyond the borders of a state (Smith, Zhang, & Barberet, 2011a). They further argue that international criminology can be approached from two angles; in terms of subject matter or the type of crime and in terms of the context. In the former case, it involves

studying international crimes categorised as universally recognised criminal activities that are considered a serious matter of international concern. These include genocide, war crimes and crimes against humanity. It could also mean studying transnational crimes which can be defined as crimes involving more than one state in terms of its planning, control or execution as well as organised criminal groups in more than one state when criminal effects spill into another state. Examples of such crimes include trafficking and money laundering.

In the latter case, the context in which a crime is approached gives it the international label. A global approach takes into account the wider political and cultural complexities beyond the location of the crimes. A similar reference would be “global criminology” which studies issues that transcend the nation state such as terrorism, trafficking, immigration and asylum issues and drugs. The field claims to focus on international and transnational crimes but has however been silent on mass atrocities. A 2013 publication, *Global Criminology: Crime and Victimization in a Globalized Era* (Jaishankar & Ronel, 2013), addresses four themes; terrorism, cybercrimes and victimisation, marginality and exclusion, and theoretical and practical models of criminal victimisation and none of the chapters centres on mass atrocities as an international crime. A more recent, 2015 publication *Global Criminology* (Palmer & Warren, 2015) although more nuanced in its exploration of international crimes, is still silent on mass atrocities

A more established discussion on international crimes within criminology has been confined in the realm of state crime (Haveman & Smeulers, 2008). State crimes have been described as

“harmful or illegal acts carried out by officials on behalf of the state which infringe fundamental rights ... government crime encompasses harmful acts carried out on behalf of the state as well as harmful or illegal acts carried out by state officials for their own benefit or benefit of their party” (Watts et al., 2008:214).

Such a definition rightly criminalises such acts by state or their machineries. It however is critical to understand who defines them as illegal? If what is criminalised is to be determined by the criminal justice system, the government is therefore at the fore in dispensing what is determined to constitute criminality. The government is less likely to implicate itself by declaring its activities criminal. More so, such crimes sometimes remain hidden and become institutionalised and viewed as legitimate forms of state policy and practice (Stanley, 2005; Welch, 2010). Such a scenario may very well explain

highly orchestrated state criminal activities such as the Nazi killings, genocides and forceful removal of indigenous populations. State complicity however does not explain the absence of discussion on crimes committed for instance during a civil war in which some of the perpetrators are ordinary citizens not affiliated with the government. The non-culpability of states as perpetrators is further backed by studies that find that many ordinary people do not consider state violence as criminal or are ready to legitimise it or even accept it as lawful (Watts et al., 2008). Moreover, there is often limited funding into research on state crime (Friedrichs, 1998) particularly due to the nature of such research which would unearth state culpability and criminality.

Rothe & Mullins (2009) similarly express their reservations on the limitations imposed on the categorisation of violations of international criminal law under the ambit of state crimes. They point out that the definition of state crimes as being “any action violating public international law or international criminal law, when these actions are committed by individuals acting in official or covert capacity as agents of the state pursuant to expressed or implied orders of the state” (p.98) potentially excludes groups that might not be considered as agents of a state such as paramilitaries, militias, transnational and international organisations and civilian individuals. They therefore call for a broadening of the definition and understanding of the violators of international criminal law.

Rothe & Mullins (2009) further propose a model to analyse international crimes. The strongest attribute of this model is in its attempt to cover the multiplicity of the actors, forms and means that characterise international crimes. In their model, they propose four levels of analysis of international crimes; *international*, *state* or *structural*, *organisational* and *interactional*. International crimes occur in a space of interactions between various levels of social forces and institutions. At the *international* level, such a model would analyse the role, motivation and interests of international institutions. This is vital given the participation of international institutions in many of the world’s conflicts and yet surprisingly there is a glossing over of their role. The *structural* conditions, whether political, economic or social that characterise a state play a significant role in the perpetuation of international crimes and at this level, the analysis would explore these interactions. At the *organisational* or *meso* level, the authors propose for an analysis of the organisational structures and culture of actors violating international criminal law in order to understand such crimes while at the *interactional* level, the authors suggest that the integrated model should be able to explain the motivations and opportunities of all actors.

Whereas this model is inherently useful in pushing for a nuanced understanding of international crimes, it does not address the role of these entities in the post-conflict setting. Conversely however, such an understanding can be instrumental in pushing the boundaries of how societies are able to deal with the past. Contemporary post-war discourse for instance has taken a strong stance on addressing the role of both international and local actors in fuelling and maintaining a conflict. An example is Pruitt (2014) who attempts to draw upon criminological theories to understand the crime of genocide. He argues that one of the limitations of criminological theories transplanted to the realm of international crimes is that many of the theories are “individual-decision based theories at a micro level of analysis” (p. 3) whereas state crime occurs at a macro level with multiple rather than single causes and levels.

One of the more focal studies that attempts to link criminology and transitional justice is Parmentier (2011). He identifies three theoretical frameworks under which crimes of concern to TJ have been studied in the context of criminology; through the angle of (1) political crimes; (2) state crimes; and (3) violent crimes. The study emphasises that the interconnectedness of the two fields is not an entirely new thing and additionally proposes three ways in which criminology can contribute to the study of international crimes and transitional justice. It could enhance (1) understanding the nature of crimes and criminal behaviour; (2) understanding the nature of victimisation and needs of victims and, (3) understanding various strategies for dealing with the legacies of large scale abuse.

The first two dimensions are already picking up in criminology publications, notably the second aspect which has a whole field of victimology with victims of mass crimes gaining attention considerably particularly through the World Society of Victimology and the International Victimology Institute, Tilburg, among others. The third aspect has largely remained unexplored although Parmentier (2011) argues that research on the strategies for dealing with crime have had “a long tradition in criminology and criminology justice studies, and to tap into the insights of ‘what works’, what does not work and ‘what is promising’ cannot be overrated” (p.388). As such, these insights would be relevant in the analysis and evaluation of the mechanisms for dealing with international crimes.

Following up on that observation, the subsequent sections explore the elements of truth seeking and reparations in criminology with a view to extrapolating this to a TJ framework.

4.3 Truth seeking in Criminology

From the literature, I identified two ways in which truth is conceptualised; truth that emerges from strict evidentiary procedures such as in the courts and court processes, or 'judicial truth' (Ewald, 2008; Viola, 1995) and fluid truth from experiences such as through Restorative Justice processes. Although both serve to establish the facts following a harm, the means and purpose of attaining the truth vary as discussed below.

Judicial truth

The mainstream approach to truth-seeking in criminology has mostly been framed through the criminal justice system, specifically through judicial proceedings. Criminal courts and the court system are presented as having the main purpose of searching for the truth (Bradley & Hoffman, 1996). The truth is presented as a set of objective facts which are considered to be "'fair', 'just' and 'authoritative'" (Ewald, 2008, p. 409). This is generated through the collection of evidence and mainly to facilitate the prosecution. The basic framework through which the truth is generated involves identifying information that is relevant for a case under investigation. The information is then narrowed down to produce facts to establish individual criminal responsibility and it is these that are presented as "judicial truth" (p. 422).

The main mechanism of establishing judicial truth is through trials. Rock (2009) in his analysis of the criminal courts and court cases however presents trials as an adversarial system in which the focus is on winning a case rather than on the truth. The prosecutors and defendants aim at proving a case to the satisfaction of the jurors thereby leaving a lot of the experiences "unquestioned, unsaid and unresolved" (p. 613). He argues that during trials, competing accounts of the past are reconstructed and presented as choices between "innocence and guilt, truth and falsehoods" (p. 615). This does not leave a place for multiple truths co-existing nor for the lived experiences of the parties as the focus is on the specific crime and culpability for it. More so, the tools through which the truth is established such as the police, prosecutors and cross examinations structure their accounts to fit into the above legal categories thereby limiting the truth that emerges.

The processes of establishing a comprehensive truth through this mechanism can be challenging because of strict procedures (Bradley & Hoffman, 1996; Ewald, 2008; Friedland, 2013). Likewise, the method through which truth is attained can also have negative consequences for the parties involved, particularly the witnesses. Rock (2009) for instance states that witnesses may perceive a case that they lost as signifying that they had been disbelieved or were liars.

Sanders & Jones (2012) however distinguish between adversarial and inquisitional trial systems and argue that the methods applied in each case can influence the type of truth that is produced. The above discussion relates to the adversarial system. In the inquisitional system, there is more victim recognition and a more diverse truth-finding process. The evidence is not as restricted and witnesses are allowed to narrate their account of events. The authors however caution that victim recognition in this system does not necessarily translate to giving them control of their cases.

In establishing judicial truth, factual findings are relevant and these are presented as “knowledge’ on crimes and individual responsibility” (Ewald, 2008, p. 402). It is these same principles that are extrapolated in dealing with international crimes through the court systems, whether at national, hybrid or international levels.

According to Chalmers (2015), these process of truth seeking have mainly focused on the offender. The truth is usually used to build a case where it is sometimes viewed as an alternative or a means to minimising retributive punishment such as prison sentences. The conceptualisation of the truth-teller and the wrong-doer being the same individual however does not give adequate space to the truth-telling of victims.

Truth seeking and restorative justice

The second aspect to the understanding truth views truth seeking as an object through which the crimes, motivations and impact of crimes can be understood and explored. The main approach in this framework is Restorative justice. Walgrave (2008) defines Restorative Justice as “an option on doing justice after the occurrence of an offense that is primarily oriented towards repairing the individual, relational and social harm that is caused by that offense” (p. 621). This approach views crime as a disruption to the social harmony. Crime is considered an offence that does not only affect those directly involved in it but extends to indirect parties including family and community. Therefore, it is not enough that the crime should be punished but more importantly

restoring the balance in society by repairing the relationship between the offender, victim and community (Braithwaite, 2004, 2005).

A lot of the comprehensive discussion focusing on truth seeking has therefore emerged in the context of restorative justice. The process of establishing the truth within retributive systems, particularly the criminal justice system has been strongly criticised as being offender biased and procured to serve the interest of the system and the offender. However, Restorative Justice processes such as family circles have been viewed as instrumental in facilitating the establishment of the truth. The programmes are based on the notion that parties to a conflict ought to be actively involved in resolving the conflict and mitigating its negative consequences. The offenders are also able to return to local decision making. Restorative Justice is therefore a means to encourage the peaceful expression of conflict to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practices (United Nations, 2006b).

One of the assumption of RJ processes is that the offender owns up to their crimes through self-confrontation (Braithwaite, 2005) or that the community is able to confront them and therefore elicit remorse. In the pursuit of truth, it is assumed that offenders experience remorse from their conduct and take charge or responsibility for their actions. This experience is therefore expected to change the offender from doing wrong. Additionally, in Restorative Justice, truth seeking is discussed in the framework of known victims and known offenders. These assumption may in a number of cases not hold in the case of Transitional justice, particularly in contexts in which offenders are either not known or are unwilling to participate.

A more concrete discussion in which truth seeking and restorative justice has been linked in the context of international crimes is in the practice of truth commissions. Stanley (2005) for instance discusses truth commissions in the context of state crimes and how the mechanism can be useful in recognizing or denying state crimes. Her discussion is however limited to the role of truth commissions in documenting and acknowledging state crimes. Drawing on Nancy Fraser's critical theory of recognition, she argues that misrepresentations of culpability, victimhood and offenders in state crime are challenged through the process of truth commissions. Truth Commissions therefore need to "establish a recognition based on identity (detailing who victims are and what they have suffered, who perpetrators are) as well as status (specifying what victims need to deal with injustice)" (p.588). She however argues that truth

commissions on the other hand can inhibit recognition due to a number of operational and structural limitations such as their limited mandates, operating time frames and when they fail to include marginalised groups. Her arguments however are vital to approaching state crime as comprising of multiple levels and features in the way crimes occur and are perpetuated.

Similarly, Ameh & Alidu (2010) connect peacemaking criminology with truth commissions and argue that truth commissions deal with similar issues and utilise the same values and principles at the national level as do restorative justice programmes and practices at the community level. Their discussion highlights the benefits of restorative justice and peacemaking criminology over a criminal prosecution approach in the pursuit of justice and reconciliation. They use the terms restorative justice and peacemaking criminology interchangeable, in fact, even arguing that they are “grounded in similar values and practices” (p.257). This argument is however not further elaborated thereby curtailing its ability to make a theoretical and methodological contribution to the understanding of restorative justice and truth seeking.

Chalmers (2015) however argues that truth commissions do not produce a balanced truth between offenders and victims. In a number of cases, they are limited in their inclusion of the offender’s truth. Truth commissions being victim centred place emphasis on the victims’ truth and there is no mechanism for formally accusing the wrong-doers of any wrong doing, except through a victim’s story. Chalmers (2015) however limits his analysis to the Canadian Truth and Reconciliation Commission which explicitly prohibited it from naming the perpetrators. Not many truth commissions have however publically named perpetrators nor enjoyed a balanced participation of both victims and perpetrators which therefore has consequences on the final truth that emerges.

From the above exploration of truth seeking in criminology, three aspects stand out; the offender focus of truth seeking in the criminal justice system, the potential of truth seeking in facilitating reconciliation through RJ processes and the limitations of truth commissions in establishing the truth due to victim focus over offenders. Moreover, the context in which truth seeking is carried out is individualised, often between a known offender and victim. In this regard, I find that the way truth seeking has been framed in the TJ to be more progressive in terms of the multiple ways that truth can emerge as well as the alternative truths that that the process produces.

4.4 Reparations in Criminology

Different terminologies have been used in reference to reparation in criminology, each with specific implications in terms of the benefit or implications of the benefit. These include compensation, restitution and reparation.

Jacob (1970) for instance distinguishes between 'compensation' which he refers to as payment made from state funds to a victim and 'reparation' which is used interchangeably with 'restitution' as payment from the offender to the victim for the harm. Walklate (1986) offers a broader definition of reparation which comprises of activities performed to repay the damage from a crime such as apology, community work and direct payment. She differentiates reparation from restitution which is referred to as the return of stolen property or payment for damages or injuries. Similarly, McLaughlin & Muncie (2001) in *The Sage Dictionary of Criminology* have described reparation as "actions that aim to repair the damage caused by crime" (p.376). They also distinguish between the concept of restitution and reparation. Restitution is very specific comprising of tangible benefits awarded to the victim for the loss of injury suffered, specifically, goods and monetary compensation. Reparation on the other hand implies the "wider aims of recognition of the social rights of victims and repairing the social damage caused by crime" (p.376). Restitution however, may also be considered as leading to these same aims.

The view of reparation as repairing social damage has been conceptualised within the 'dominion' concept proposed by Braithwaite & Pettit (Zedner, 1994) in which reparation is conceived as a process which is beneficial to both the offender and victim. The victim is able to obtain material and emotional satisfaction and reassurances of non-repetition while the offender is expected to experience a transformation of attitude and behaviour. The ideal end of a reparation exercise would be to attain reconciliation among all the actors.

On the other hand, there is a lot of reference to the concept of reparative justice, sometimes as a parallel to retributive justice but more as an emphasis to distinguish between the different approaches to victims and offenders relationship within the criminal justice process. Normally, reparations fall under the wider ambit of reparative justice of which other components such as restitution, compensation and symbolic measures are also identified.

McLaughlin & Muncie (2001) however identify two possibilities for payment of reparation. First are compensation orders. These comprise of court ordered payments to the victims by offenders. They may either be in addition to the punishment or as an alternative to punishment. In this case, it appears that the payment of compensation highly depends on the availability, ability and willingness of the offender to pay which implies that they have to be caught at the very least and convicted which raises the question of enforceability. More critical though would be the question of how both parties, the offender and victim feel about this arrangement. Are both parties availed the space to communicate the impact of the crime before an award is made? Does the offender express their remorse through the court decision? Or is the process simply an order that has to be complied with? According to Bonta, Jesseman, & Cormier (2007), court ordered payments are less restorative because the parties to a conflict are not fully engaged in the process.

The second possibility according to McLaughlin & Muncie (2001) are state compensation schemes in which the responsibility to compensate a victim is placed on the state. According to the authors, these may be easier to implement but they exclude the offender and so there is a potential that this form of reparation may fail to meet the “traditional aims of punishment or the broader aims of restoration” (p. 376).

The general aims of reparation are viewed as being victim centred. For instance, Zedner (1994) points out that reparations aim to repair the damage caused by the crime, appease the victim so they do not take the law into their hands, prevent the victim from turning to crime and the prospect of reparation can encourage participation in the judicial process.

Furthermore, Chalmers (2015), discusses the transformative element of reparations in which an offender experiences loss or a potential loss in paying or giving something they value. The voluntariness of the process or act affirms that it originates from the offender. The transformative aspect occurs when the act “changes the subject’s relation to oneself as well as to others” (p.19). They take on a new identity and position of less power.

From the literature, two approaches to reparation within criminology stand out; Reparations through the criminal justice system and reparations through the Restorative approach. These are discussed below.

Reparations through the criminal justice system

Reparations through the criminal justice system has sometimes been viewed as an alternative and/or complement to punishment. This is mainly through payments that are either state ordered or paid by the state. In this perspective, the main features that are highlighted are; (1) it is to be made to the victim (2) the offender, state or other authority undertakes the responsibility to pay the reparation and (3) it is viewed as a process of reforming or rehabilitating the offender. The context in which the reparation is made is through the criminal justice system where the offender is identified and goes through the criminal justice procedure. This however does leave some unanswered questions such as what happens when the offender is unknown and there is no criminal proceedings going on? Can the victims still access reparation when the offender is at large? What happens when the offender is unable or unwilling to pay? What is the significance of the source of reparation for the victim when it comes from an alternative source other than the offender?

Walklate (1986) further argues that reparation is conceived primarily to benefit the criminal justice system, with a focus on the offender (Gromet, 2011). This view however comes from constructing reparation as either an aide or alternative to the criminal justice system, such as when the offender agrees to reparation then their sentence is reduced or suspended or even charges not being placed by the victim. Looking at it from this angle, the focus of reparation becomes the offender because it aims at easing the demands on the criminal justice system.

Ideally however, reparation is seen more as an interaction between the offender and the victim in which the offender atones for the harms they caused and the victim is gratified.

The reparation effort is intended to principally come from the offender. Such an effort comprises of at least two dimensions; the material aspect of it where the offender pays for the harm or loss that they caused and the broader aim of repairing the social damage by acknowledgement of the damage their actions caused. Such reparation would comprise of either monetary benefits or the provision of a service to the victim or community that has suffered the damage. In case there is no identifiable victim, then the proposal is usually towards a form of community service for reparation.

Reparation also rests on the active participation of both the victim and the offender in the process. The different parties are encouraged to communicate their views on the

crime and harm. In some cases, reparation proceedings are conducted as an alternative to formal court procedures. This is however more prevalent in mediation processes between the offender and victim. The victim-offender mediation can be done at various stages of the criminal justice process such as at the pre-prosecution, pre-sentence and post sentence. In it, the different parties seek to address the wider impact of the crime, identify ways whereby the offender can amend for the crime and also offer the possibility of social reintegration of the offender in the community. In this way, reparation becomes a rehabilitative instrument in which the offender recognises his wrongdoing and makes amends by paying back to the victim. For this to have a rehabilitative value however, the impetus has to come from the offender.

Reparations and Restorative Justice

A second approach to reparations is through a restorative justice perspective which focuses on a more holistic approach to crime and redress. Restorative justice provides for a more in-depth discussion of reparation. A restorative justice approach focuses on repairing the material and psychological harm and involves all stakeholders affected by the crime convening to discuss about how to deal with the crime (Gromet, 2011). It further emphasises active responsibility whereby the offenders and their communities of care take steps to right wrongs through reparation which may be material or symbolic. The involvement of a wider circle of carers and the active involvement of the offender has the potential of success than when the state or a remote entity such as an institution takes on such a responsibility (Braithwaite, 2005).

However, the contexts in which restorative justice approaches have been applied in criminology have mostly been limited to low level offenders or crimes. It also assumes the victim and offender knowing each other before the processes are started therefore the emphasis on individual responsibility for the offences.

The conditions under which reparations are awarded are however different in the context of international crimes. A lot of the violations are serious, occur on a large scale, sometimes over a period of time. The profile of the victim and perpetrator are sometimes not clear with many cases of victims and perpetrators not knowing each other. At local levels, restorative approaches have been undertaken, such as the *mato oput* in northern Uganda. Even in the context of victims and perpetrators not knowing each other, families of perpetrators take on an active responsibility to amend the wrongs. The values of such traditional processes in the context of mass atrocities are however still continually being debated (Baines, 2007; Tim Allen, 2007).

At national levels, however, reparations for international crimes is designed along the framework of the criminal justice process. The additional nuances, particularly in the content of the reparations and the context in which the reparations are provided are more detailed than in mainstream criminology.

4.5 Linking Criminology, truth commissions and reparations

Approaching criminology from the perspective of TJ, particularly focusing on truth seeking and reparation, two key elements stand out; first is the individual-centred focus of criminology where the key players are a known victim and a known offender. Second, there is a rather limited conceptualisation of truth seeking and reparation. Truth emerges mostly as an offender's confession and where victims are involved, they serve as witnesses. Similarly, reparations are associated with restitutions and compensation despite there being varied options for reparation.

Even when the discussion attempts to move away from individual low level crimes to for instance state crimes as with Stanley (2005), the contextualisation of the crime and the perpetrators still remains very silent on the unconventional nature of a number of international crimes such as civil wars. Individual-level processes also apply to truth seeking and reparations where it is carried out between the offender and victim.

This does not mean that criminology has been void of any exploration beyond the individual. A growing body has focused on fields such as state crime, transnational crime, organisational crime and collective violence. Pruitt (2014) identifies the fields of state crime, organisational crime and collective violence as areas in which criminology has attempted to explore beyond the individual based analysis particularly in understanding genocide from a criminological angle.

Smeulders & Haveman (2008:487) have further drawn attention to the need for criminologists to include international crimes because criminologists are essentially the "specialists in crime." It would also be interesting to explore what criminologists perceive of scholars and practitioners from other fields discussing international crimes. Truth commissions, for instance, have focused on reporting and narrating the experiences of atrocious crimes but neither the approach they have taken in constructing the aetiology of a conflict nor its recommendations has had criminologists batting an eye.

As a point of caution on linking criminology and transitional justice or international crimes, I find Schabas' (2011) observation quite useful where he cautions that "some of our understandings about criminal behaviour in a peacetime domestic context are inapplicable to the types of situations that interest international prosecutions" (p.356). For instance, whereas issues of recidivism is pertinent in the domestic sphere, they are much more complex at the international level where perpetrators often reintegrate back into the community and in the best case scenario are harmless and no threat as seen in cases such as Sierra Leone, Liberia and Uganda. In other cases, there is a fluid movement of perpetrators from being ordinary criminals to combatants in conflict situations or a transformation of the former combatants into criminal gangs (Suhrke & Berdal, 2012).

Drawing on this chapter, one overarching theme on the relationship between criminology and transitional justice has been the marginalisation of transitional justice issues in mainstream criminology and the impetus for creating synergies between the two as seen through the advocacy for specialisations in international criminology but also through subjects that have a strong base in criminology such as restorative justice and victimology exploring international crimes (Aertsen, Arsovska, Rohne, Valiñas, & Vanspauwen, 2008).

Whereas most of the discussion has focused more broadly on the need to incorporate criminology in international crimes (Friedrichs, 2008; Parmentier & Weitekamp, 2007), Parmentier & Weitekamp (2007) further narrow it down to proposing criminological considerations in understanding transitional justice mechanisms. For instance, they state that in seeking for the truth, criminology can have both practical and theoretical bearings. On the practical level, it can develop new techniques and interpretations of forensic procedures, create forums for victim participation and explore possibilities for victim-offender interaction. Theoretically, criminology can contribute to mapping crimes and their origins. This can be done by interpreting the existing criminological theories about the sociological and psychological causes of crime and developing new theoretical frameworks. For reparations, criminology can study and evaluate existing schemes, recommend improvements and provide deeper analysis of key concepts like harm and how to restore such harm through empirical studies.

Despite the limited interaction between criminology and Transitional Justice, there is a growing advocacy for establishing positive links particularly in seeking to study

international crimes through the theoretical, conceptual and methodological frameworks of criminology.

More specifically, the fields of victimology and RJ can be useful platforms for understanding the dynamics of international crimes. Both of these fields provide more nuanced approaches to victims, offenders and crime. A victimological approach to international crimes for instance can be applied to construct the nature of crimes and criminal behaviour as well as in understanding the nature of victimisation and needs of victims. Letschert, Haveman, de Brouwer & Pemberton (2011) have from this perspective proposed for a comprehensive approach beyond the legal responses while dealing with international crimes. Similarly, RJ avails a broad spectrum of mechanisms for bringing together the victims and offenders in order to repair the harm. Truth commissions and reparation programmes have at their core victims and promoting the interaction between victims and perpetrators in order to facilitate healing. Such a process would benefit from the detailed attention to victims, perpetrators and criminal behaviour offered in the context of victimology and RJ.

Conclusion

In this chapter, I attempt to address five issues; First, the status of the interaction between criminology and transitional justice. This is an area that is gaining the attention of both fields; second, the definition of international crimes from a criminological perspective. Here, a lot of the definition has focused on crimes that present with international components such as transnational, organisational, cybercrimes, trafficking, among others. International crimes as crimes against international criminal law is now just gaining prominence looking at the arguments in favour of analysing international crimes using criminology theories. In issues three and four, I discussed the notion of truth seeking and reparation in criminology and what it can offer to the field of transitional justice. I was interested in the processes of establishing the truth and payment of reparation and whether there is any significant divergence in criminology and transitional justice. In the fifth part, I linked criminology, truth commissions and reparations and argued that both criminology and the mechanisms of truth commissions and reparations could be enriched by a closer interaction of the methodological, theoretical and conceptual frameworks.

PART III. OVERVIEW OF THE SELECTED CASES

“DDR, TRC: All the same thing! ...our wounds cannot be healed when we see the perpetrators being compensated and we get nothing” (Shaw, 2010, p. 112)

CHAPTER 5: GHANA: “WAS THERE A TRC IN GHANA?”

5.0 Introduction

Ghana’s history of human rights violations and the choice of the truth commission mechanism to confront this past is not widely known. This chapter therefore presents Ghana’s experience that culminated in the establishment of the National Reconciliation Commission (NRC). The Chapter traces the history of violence and abuse that consistently lingered from one regime to another. This persistence of state institutionalised violence remained largely unaddressed even when regimes changed. Impunity was further entrenched by the 1992 constitution through the indemnity provisions that protected the perpetrators. Ghana’s case further presents an example of where TJ mechanisms are instituted in contexts that did not experience full-blown conflict and where state institutions continued to operate despite a number of them being implicated in the atrocities. The analysis is divided into four parts. The first part presents the general background for the establishment of a truth commission where it discusses the political and legal contexts. In the second part, the set-up of the truth commission is discussed. The third part presents the reparation framework as recommended by the truth commission and in the fourth part, I discuss the post-truth commission proceedings.

5.1 Context for a truth commission

In contrast to most of the West African states, Ghana has been considered an oasis of peace in a region filled with civil wars (Afolabi, 2009; The Economist, 2003). Contrary to the popular impression however, Ghana has also grappled with a painful past. According to Valji (2006, p. 3), Ghana has faced a “long history of oppression, authoritarian and undemocratic practices in the country as well as continued use of violence by successive regimes.” In the course of its political history after its independence, Ghana has experienced at least four successful coups, a number of unsuccessful ones as well as periods of unconstitutional and authoritarian rule.

The complexity in Ghana’s history generated deep seated divisions between rivalling political parties, inter and intra ethnic clashes and tensions between different chieftaincies. Ghana’s legacy has also been tainted by gross human rights violations and the perpetration of a culture of silence (Alidu & Ame, 2013).

In 2001, as a follow up regarding his election campaign promise, President John Agyekum Kufour began plans to institute a National Reconciliation Commission to investigate human rights abuses and foster an environment of transparency and accountability. However, as will be elaborated in the coming sections, the partisan origin of the NRC was detrimental in that it was viewed as a New Patriotic Party (NPP) tool for embarrassing the other regimes.

Unlike other truth commissions in Africa, the NRC has had considerably less attention by both practitioners and researchers. In addition to this, the commission was also contested locally with concerns over whether Ghana even needed a truth commission to address its past history. On the one hand, some of the critics argued that the events that needed to be addressed had happened too long ago, therefore, there was no point in bringing them to light again. They argued that some of the victims felt that they had already been able to move beyond the crimes and were not anxious about re-opening the wounds and publicising them by their participation in the commission. It was also perceived that the issues that Ghana was grappling with were not severe enough to warrant the use of a truth commission. However, on the other hand, the proponents observed that Ghana's dark past with its history of deceit and negation needed to be addressed and the victims needed to receive some form of acknowledgment (Alidu & Ame, 2013).

The justification for the truth commission was based on two contexts; the political context of the crimes committed and the legal framework for addressing heinous crimes of the past.

5.1.1 The political context and the need for a truth commission

Ghana's political complexities date back to pre and post-independence struggles with different political parties striving for power. Notable among these are the United Gold Coast Convention (UGCC), the Convention People's Party (CPP) and the National Liberation Movement (NLM). Consequently, the CPP won the general elections with Kwame Nkrumah as the head. The other political parties disapproved of the win and resorted to violence as a means of contestation. This set forth a series of violent incidents including bombings and assassination attempts (Ameh, 2006a, 2006b). The response to these acts of violence led to the enactment of the Preventive Detention Act (PDA) (1958), an equally violent and oppressive policy used to counteract the violence. Haynes (1991, p. 409) points out that "since the regime of Kwame Nkrumah (1957-66),

successive governments in Ghana have ruled by the use of tactics and policies designed to muzzle or even destroy opposition.” The consequences of such policies have been violations human rights, distrust of state institutions and divisions in the country.

Drawing on the literature dealing with Ghana’s political history, the development of Ghana’s political crisis and violent past can be grouped into three waves; the first wave of post-independence violations, the second wave of coups and counter coups and the third wave of unconstitutional rule. With each period came a specific group of victims and although no specific group can be said to have been more victimised than the others, it was during certain specific waves that the most brutal and widespread violations occurred such as the John Jerry Rawlings AFRC regime of 4 June 1979 – 23 September 1979 (National Reconciliation Commission, 2004).

5.1.1.1 First wave: Post independence tribulations (1957-1965)

According to the findings by the NRC, the path to independence and general elections of 1957 were not smooth. It was characterised by opposing political parties bitterly contesting among each other. The first violent manifestation were as early as 1954 when an assassination attempt was carried out against Kwame Nkrumah, the head of the Convention People’s Party (CPP) (National Reconciliation Commission, 2004).

Furthermore, civilian casualties as a result of sporadic bomb explosions in public places and functions took this conflict away from the politicians to the by-standers. This state of affairs created desperation and insecurity. In the NRC report, they highlight the sense of insecurity that was heightened in the private sphere when children, notably members of the Ghana Young Pioneer (GYP) movement were encouraged to report their own parents if they suspected them to be involved with the opposition. This breach of trust and spread of fear in families was perceived to tantamount to a “violation of the sanctity of the family and of family life” and an “invasion of the family’s right to privacy” (National Reconciliation Commission, 2004, p. 36).

Following Nkrumah’s win at the elections, continued opposition led to the enactment of the Preventive Detention Act (PDA) 1958. The PDA gave powers to detain a suspect for up to five years without trial, among others. The PDA was amended in 1959 and later in 1962 where the detention period was extended indefinitely. The PDA has been viewed as a catalyst that promoted repression and dictatorial tendencies in Ghana (Hor

Vormawor & Atuguba, 2014). According to McLaughlin & Owusu-Ansah (1994), it was estimated that between 400 and 2,000 individuals were detained by 1961 including prominent politicians such as Adamafo Tawai (Minister of state for presidential affairs) and Ako Adjei (Minister of Foreign affairs). As a result of the Act, various individuals were witch-hunted on the basis of their political views, detained, tortured, exiled and even killed.

During this period, all opposition and organised groups such as ethnic, religious and political groups were banned. The country was declared a one party state in 1965 with Nkrumah becoming president for life. This period also witnessed the expulsion of persons whose presence was thought to upset the public good and public interest under the Deportation Act (1957). This expulsion was only to be applied to non-Ghanaians, however it took on a political tone when some of the individuals were deported as a result of their political affiliations and activities (Rathbone, 2000).

In general, this period constituted of consolidation of fear and silencing opposition (National Reconciliation Commission, 2004). The prevailing philosophy was that one was either for the state or against it and those against it were ruthlessly pursued. Those who opted out of "*cipification*" were in effect eliminated. *Cipification* was a word play on the acronym CPP of the ruling party referring to a process of indoctrination (National Reconciliation Commission, 2004, p. 137 & 296). The whole indoctrination spared none and children from four years to twenty one years were indoctrinated in the philosophy of "*Nkrumahism*" including university students who had to undergo a two weeks study at the Kwame Nkrumah Ideological Institute (p. 37). Suspicion and fear pervaded the society and loyalists were encouraged to spy on and report opponents of the regime at all levels of society in homes, work and religious places.

The violations during this period were targeted mainly at opposition groups and individuals who did not share the same ideological views as the ruling party. Although some individuals attempted to redress the wrongs through the legal system, it was a difficult process because of the lack of separation of powers between the executive, judiciary and other arms of government. Furthermore, the blatant influence by the executive in the judiciary not only undermined the judiciary and the notion of separation of powers but also sent a clear message that the people could not rely on the judiciary for a free and fair trial and procedure for justice. According to Bing (1968), the legal system was inadequate for dealing with the type of crimes, which he calls political crimes that were occurring during this period. More so, the legal system was

inappropriately used to target opposition politicians and individuals with dissenting views. Although not discussed in detail, civilian populations were as well caught up in these violations and suffered varying degrees of harm.

5.1.1.2 Second wave: Coups and counter coups (1966-1981)

The second wave was characterised by coups and counter coups with brief periods of constitutional rule. According to the National Reconciliation Commission Report (2004) each successive regime continued to perpetuate human rights abuses targeted at mainly dissenting voices as well to silence the population. Below is a brief look at the different regimes that operated during this period and the violations that occurred as highlighted by the NRC .

Major Akwasi A. Afrifa – National Liberation Council (NLC)

On February 24 1966, a coup d'état was staged by a group of military and police officers which brought to power the National Liberation Council (NLC). This was only a first in a period that was characterised by forceful and military take-overs as well as military rule. Over the next three years, a military regime was established and according to (Ameh, 2006a, p. 95, 2006b, p. 347), it was characterised by a “cycle of vengeance and vendettas.” The heavily criticised PDA morphed into “protective custody” and the culprits were CPP ex-functionaries who were detained in various prisons in the country. Any association with CPP was criminalised to the extent that persons were barred from holding any appointment in the public service for up to ten years from 10 January 1968 under The Elections and Public Disqualification Decree, 1968 (NLCD 223). Additionally, property and assets of CPP functionaries was confiscated by the state (National Reconciliation Commission, 2004). According to the report, this amounted to discrimination and a deprivation of their means of livelihood. It was also during this period that the concept of trying civilians by military tribunals was introduced following a January 1967 coup attempt which included three civilians. Furthermore, torture in prison was rampant whereby detainees were subjected to various forms of torture. Women were especially singled out for sexual abuse (National Reconciliation Commission, 2004).

Dr. Kofi Abrefa Busia – Progress Party (PP)

Following a general election in 1969, Dr. Kofi Abrefa Busia of the Progress Party (PP) became Prime Minister. This ushered in the second republic and an expectation of the return to democratic rule. However, far from that, the regime continued to perpetuate

the culture of fear and intimidation set by its predecessors. In the “*Apollo 568*” case, 563 civil servants were dismissed in 1970 without due process on accusation of inefficiency and corruption. Despite one of the victims, E. K. Sallah appealing in court and winning the case, he was still not reinstated. (NRC Report 2004, p. 40). This reinforced the image of a government that did not respect the judiciary and fears that it was not any different from its predecessors.

A mass deportation programme was also carried out under the Aliens Act, 1963 (Act 160) in which all individuals considered to be non-Ghanaian were ordered to leave the country. The report states that individuals considered foreign suffered inhuman and degrading conditions in the implementation of the order. Many lost property or ended up in prison awaiting their fate. Additionally, a number of individuals who could not prove their Ghanaian citizenship were persecuted including third generation descendants of Lebanese and other neighbouring countries notably Togo, Nigeria. (NRC 2004, p. 41).

According to Aglago (2014) some of the reforms and policies during the Abrefa regime were considered as anti-people and alienated the regime. Two years and three months into his rule, the army organised a coup led by Lt. Colonel Ignatius Kutu Acheampong which over-threw the government on 13 January 1972. This brought to power the National Redemption Council (NRC) and marked the country’s second return to military rule.

Lt. Colonel Ignatius Kutu Acheampong – National Redemption Council (NRC)/Supreme Military Council I (SMC I)

One of the actions of the NRC was the enactment of the *protective custody law*. Using this law, the regime placed all functionaries of the previous regime in detention thereby perpetuating the cycle of vengeance and vendettas. The detention was also extended to all individuals who held and voiced an alternative view to the regime’s policies. In effect, hundreds of citizens ended up under detention (National Reconciliation Commission, 2004, p. 43). This reinforced the silence and instilled fear in expressing dissenting opinions.

The NRC evolved into the Supreme Military Council (SMC) in 1975 and further militarised all aspects of governance and institutions. According to the NRC report, all the ministries, state enterprises and local administration were put under military officers while freedom of speech and association was curtailed through banning

independent newspapers, detaining journalists, breaking up student demonstrations by armed soldiers and repeatedly closing universities. These activities were implemented using force, torture and intimidation.

The state militarisation was also extended to civilians, reminiscent of *Nkrumahism* except with this regime, militarisation was used as a disciplinary measure. Any civilian thought to be deviating from the regime expectations was subjected to military discipline. This included reporting late to work, striking and indecent dressing or perceived immoral lifestyles (National Reconciliation Commission, 2004, p. 43). Similar to the previous regime of Maj. Afrifa which had set the precedence by trying civilians in a military tribunal, the Acheampong regime under NRC/SMC I subjected non-military civilians to military discipline and military tribunals under the Subversion Decree, 1972, NRCD 90 and Military Law (National Reconciliation Commission, 2004).

General Frederick William Kwasi Akuffo – Supreme Military Council II (SMC II)

Lt. Acheampong was removed from power by members of the SMC in July 1978 through a non-violent coup and replaced by Lt. General Frederick William Kwasi Akuffo. During General Akuffo's regime, torture continued to be used with severity, especially on those detained. The torture was both physical and psychological with the aim of degrading the individuals. The NRC recounts for instance individuals made to clean public lavatories with bare hands (National Reconciliation Commission, 2004, p. 46).

Flt. Lt. Jerry John Rawlings I – Armed Forces Revolutionary Council (AFRC)

Ten months into the Akuffo regime, Flt. Lt. Jerry John Rawlings and a group of junior officers attempted an unsuccessful coup on May 15, 1979. However, a successful coup was carried out by military officers sympathetic to Rawlings a month later on June 4, 1979 through which the AFRC gained power.

Key during this regime was the purging of senior officers and execution of former heads of military governments such as Afrifa (NLC), Acheampong (SMC I), Akuffo (SMC II) and some associates of NRC and SMC. In the “*house-cleaning*” programme, the cycle of vengeance and vendettas was carried out within the security forces. The junior prison and police officers carried out this operation with zeal for the perceived ills they had endured during the previous regime. In flagrant disregard for the judiciary, specially created “*peoples courts*” tried culprits, mainly functionaries of the NRC and SMC who were sentenced to impossibly long prison terms of between 50 years and 105 years

and executions. The highlight was the execution of the seven generals including heads of state on 16 June and 26 June 1979.

The policy of seizure of goods which were believed to be hoarded and forceful price cuts crippled the business population, many of whom were killed or maimed. Demolition of places which were believed to be storage for hoarded goods also had the same effect of destroying livelihoods. A well-known case was the demolition of Makola No. 1 market in Accra where some families had sold for generations. The widespread insecurity and torture on civilian and military population also continued during this regime (National Reconciliation Commission, 2004).

As with previous regimes, individuals and political opponents were witch hunted for holding dissenting views. This period, 4 June 1979 – 23 September 1979 has been specifically highlight by the NRC as one with the most grave violations that surpassed all other regimes (National Reconciliation Commission, 2004). These included murder, abductions, disappearances, rapes, confiscation of property and the illegal dismissal of workers (Ameh, 2006a, 2006b).

Dr. Hilla Limann – People's National Party (PNP)

In 1979 following general elections, Dr. Hilla Limann of the People's National Party (PNP) ushered in the third Republic. He enforced a policy of forced retirement for Rawlings and his associates and dismissed striking public workers. The reforms and adjustments were met with opposition from both the civilian and security forces which made him and his policies unpopular.

Flt. Lt. Jerry John Rawlings II – Provisional National Defence Council (PNDC)

Roughly two years after PNP had been in power, Rawlings led another successful coup in December 31, 1981. He suspended the 1979 constitution, dismissed the president and his cabinet, dissolved parliament and banned existing political parties and formed the Provisional National Defence Council (PNDC). This was the last coup and as discussed in the subsequent section, Rawlings spent the next decade consolidating his stay in power.

5.1.1.2 Third Wave: Politics of Violence (1982-1992)

Following a coup in 1981, Rawlings took over power and remained head of state for the next 10 years consolidating a militarised state. In general, this regime was

characterised by repression, curtailment of freedom and breeding of successive violence with the norm being arrests, murders, disappearances and seizures of property (Oquaye, 1995). Violence and repression was institutionalised and Oquaye (1995) further notes that new institutions which violated and abrogated human rights and curtailed civil society participation were established. An example he highlights are the formation of committees to purportedly involve the populace in decision making but in reality were used to witch-hunt and intimidate dissenters. These committees included the Workers Defence Committee (WDC), Peoples Defence Committee (PDC), Citizens Vetting Committee (CVC), Regional Defence Committee (RDC), National Defence Committee (NDC) and public tribunals to try those accused of anti-government acts. In December 1984, all PDCs, WDC, NDC were dissolved and replaced by Committees for Defence of the Revolution (CDR). The perpetrators largely operated under the protection of the state. In what Oquaye (1995, p. 563) refers to as “revolutionary violence,” the individuals who unleashed these terrors were “generally perceived as ‘the people,’ ‘friends’ or ‘cadres’ of the revolution whereas their victims were ‘enemies’ of the revolution, otherwise known as ‘citizens’.” To further militarise the state, state approved militias were formed. In order to decentralise the use of arms and break the military’s monopoly over the use of violence, ordinary citizens were recruited into the militias and trained in the use of arms and armed in what has been termed as the “democratisation of violence” by the NRC (National Reconciliation Commission, 2004, p. 52).

By operating under the cover of the state, the perpetrators in many cases were not directly known by the victims and could not be readily identified (Oquaye, 1995). Furthermore, because of the level of state institutionalised violence, the avenues through which victims might have sought redress for these crimes were in effect closed. It is highly unlikely that they could turn to the very institutions perpetuating the abuse of their rights for redress. The regime formalised the infringement of human rights by enacting various laws to support the repressive actions such as the PNDCL 91 Law which provided that “courts had no power to inquire into any detention that the regime had made at its discretion under the protective custody law (PNDCL 4)” while the public Tribunal Law (PNDCL 78) allowed death penalty by firing squad for political offences and precluded the superior courts of judicature over the tribunal (Oquaye, 1995, pp. 563–564). The regime in effect made use of the law to justify its acts and at the same time remove the liberty of the Ghanaians. The victims were not only limited to ordinary citizens but included prominent personalities including three high court

judges and a retired army major who were abducted and murdered on June 30, 1982 (National Reconciliation Commission, 2004, p. 55).

The regime made use of the law to justify their acts and at the same time remove the liberty of the Ghanaians. It perpetrated torture and abuse by government organs and agencies. During this period, the constitution was suspended, political participation curtailed by banning political parties, blocking civil societies and detaining party leaders while extra-judicial practices aimed at suppression flourished (Haynes, 1991).

In all of these three periods, civil society and other institutions designed to check the excesses of the state were either complicit, indifferent, gagged up or fervent participants in the abuses. The public trust in these bodies steadily dwindled to the extent that in some instances, there was a preference to the military regime as they at least managed to get things done and maintain a semblance of order (National Reconciliation Commission, 2004).

The abuses and violations were however not condoned. There were simply no avenues to seek for redress as highlighted in the subsequent discussion. When an opportunity to inquire into the past presented itself, it strongly gained momentum particularly because it was framed under the context of national reconciliation.

5.1.2 Legal framework for addressing heinous crimes of the past justification for setting up a truth commission in Ghana

The justification for setting up a truth commission in Ghana was that the existing frameworks did not adequately cover issues of how the past atrocities could be redressed. Before 1992, the very institutions meant to protect the people promoted the impunity while after 1992, after the return to constitutionalism, the perpetrators were protected through new laws and the reluctance of the victims to pursue such cases. The following section will highlight how three instruments: the 1992 constitution, the national courts and the Commission on Human Rights and Administrative Justice (CHRAJ) limited the pursuit for redress and underscored the significance of the truth commission.

5.1.2.1 1992 Constitution and the indemnity clause

The Rawlings regime that had been in power since 1981 following a coup continued to face increasing pressure for a return to constitutional rule. In 1992 a new constitution was drafted. The regime however tactically shielded themselves from possible accountability by the insertion of the indemnity provisions in the transitional provisions. According to Posner & Vermeule (2003), this is typical of the behaviour of elites in an elite led transitional justice process where they will usually seek to protect themselves from post-transitional punishment and/or extract concessions.

Article 299 sections 34, 35 and 37 categorically indemnify the PNDC and its functionaries, and the previous military regimes. Ironically, though, after the 1979 coup, one of Rawlings' first acts of retribution against the previous regimes was the execution of three leaders of the military regimes – Maj. Afrifa, Gen. Acheampong and Gen. Akuffo.

In section 34, any action or decision taken against the military regimes or persons relating to the overthrow of the government (34, 2a), the suspension or abrogation of the 1960, 1969 and 1979 constitution (34, 2b) or the establishment of the military regimes (34, 2c) is declared unlawful.¹ Additionally, Section 34 (3) further emphasises specific protection for PNDC, AFRC and its functionaries.² Both regimes were under the leadership of Rawlings (Government of Ghana, 1992).

¹ Article 299 section 34 (1) (2) state that “No member of the Provisional National Defence Council, Provisional National defence Council Secretary, or other appointees of the Provisional National Defence Council shall be held liable either jointly or severally, for any act or omission during the administration of the Provisional National Defence Council” and “It is not lawful for any court or tribunal to entertain any action or take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government of Ghana or any person acting under the authority of the Government of Ghana whether before or after the coming into force of this Constitution or against any person or persons acting in concert or individually to assist or bring about the change in Government which took place on the twenty-fourth day of February 1966 on the thirteenth day of January, 1972, on the fourth day of June 1979 and on the thirty-first day of December 1981 in respect of any act or omission relating to, or consequent upon - (a) the overthrow of the government in power before the formation of the National Liberation Council, the National Redemption Council, the Supreme Military Council, the Armed Forces Revolutionary Council and the Provisional National Defence Council; or (b) the suspension or a abrogation of the Constitutions of 1960, 1969 and 1979; or (c) the establishment of the National Liberation Council, the National Redemption Council, the Supreme Military Council which took office on the ninth day of October 1975, the Supreme Military Council established on the fifth day of July 1978, the Armed Forces Revolutionary Council, or the Provisional National Defence Council; or (d) the establishment of this Constitution.

² Article 299 section 34 (3) “...It is declared that no executive, legislative or judicial action taken or purported to have been taken by the Provisional National Defence Council or the Armed Forces Revolutionary Council or a member of the Provisional National Defence Council or the Armed Forces

Section 35 deals with property returns. It specifies that any property confiscated by the AFRC and PNDC under any decree or law made by that council shall not be reversed. Property can only be returned if it is proven to the Commissioner for Human Rights and Administrative Justice that the property was acquired lawfully (35, 1 and 2).

The constitution further removes the parliament's powers of amending the provisions in the constitution except through a referendum in which at least seventy-five percent of the persons vote in favour of the passing of the bill (articles 289-292). It however further notes in article 299, section 37 that, "Notwithstanding anything in Chapter 25 of this Constitution [Amendment of the Constitution], Parliament shall have no power to amend this section or sections 34 and 35 of this Schedule." The amendment of the indemnity provisions seems to be a sensitive issue and elicited divided opinions on whether or not it should take place according to a survey by the Centre for Democratic Development –Ghana (CDD-Ghana) (Ghana News Agency, 2010).

Appiagyei-Atua (2000) points out that indemnity clauses and provisions were not a new thing limited to the 1992 constitution. Previous constitutions like the 1969 Section 13(3) and 1979 section 15(2) and (3) also inserted impunity provisions and these were all similar to the 1992 provisions. Importantly however, unlike the 1969 and 1979 transitional provisions which had a temporary time frame with a lifespan of five years, the 1992 transitional provision was well protected to near permanency with strict guidelines in order to rid it. Removal of the indemnity clauses would not only be a lengthy process but would have far-reaching consequences. For instance, the Constitutional Review Commission recommended for the retention of the indemnity clauses and, the Chairman pointed out that removing the clauses would criminalise all the governments and those that participated in the governments since 1966 when the first republic was overthrown. Furthermore, it would require the immediate handing over political power to the Convention Peoples Party (CPP) which was overthrown in 1966. The Commission argued that rather than attempting to remove the indemnity and transitional provisions, the work of the NRC should be revisited to determine

Revolutionary Council or by any person appointed by the Provisional National Defence Council or the Armed Forces Revolutionary Council or by any person appointed by the Provisional National Defence Council or the Armed Forces Revolutionary Council in the name of either the Provisional National Defence Council or the Armed Forces Revolutionary Council shall be questioned in any proceedings whatsoever and, accordingly, it shall not be lawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act."

whether further measures to provide additional reparations can be implemented (Modern Ghana, 2012)

Irrespective of the indemnity clauses, the emerging popular human rights discourse with regard to international crime is one of non-tolerance and therefore, perpetrators can no longer hide behind the veil of national legislation or instruments that may shield them from being held accountable for their crimes.

In Ghana's case, in a survey carried out by CDD-Ghana, 97% of the respondents were in support of the establishment of the NRC and 95% were confident that the NRC would deliver when it would be set up (CDD-Ghana, 2006).

5.1.2.2 National court system

Appiagyei-Atua (2000) points out that Ghana which has ratified a number of international and regional human rights treaties is obligated under international law to take up the responsibility to provide redress for human rights violations.

Despite the impunity clauses, cases of human rights violations could still be challenged in regular courts and (Appiagyei-Atua, n.d., pp. 33–41) highlights a number of cases that were conducted either through the courts or CHRAJ. However, as pointed out by the NRC, the national judicial system did not instil faith or confidence in its ability to uphold the individual rights of the citizens, therefore a significantly small number of cases were pertaining to the past human rights violations were brought to the courts. Additionally, sensitive cases were either deliberately delayed or biased (Appiagyei-Atua, 2000).

Appiagyei-Atua (n.d.) also observes that most of the cases that made it to the regular courts were civil and political rights cases, mainly initiated by wealthy political organisations or plaintiffs. CHRAJ has been more accessible because it is free and they have local district offices and therefore has received more cases although these are mainly concerning Economic, Social and Cultural Rights. He however points out that despite its accessibility, the working class has brought in more cases in comparison to the rural population.

The national judicial system, despite the restrictions imposed by the indemnity clauses did have some limited loopholes through which cases could be initiated however few

cases made it to the courts, and it was mainly limited to a specific group who could afford it.

5.1.2.3 The Commission on Human Rights and Administrative Justice (CHRAJ)

The commission on Human Rights and Administrative Justice (CHRAJ) is the national body designed to safeguard the fundamental rights and administrative justice in Ghana. It was established in 1993 under the 1992 constitution by Act 456 (CHRAJ-Ghana, 2012) and mandated,

“to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption; abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect of such acts or omissions and to provide for other related purposes” (CHRAJ-Ghana, 1993, 7(1)(i)).

CHRAJ set the stage for the establishment of the truth commission in the way it handled the Kwesi Pratt Jnr. Case. This case involved a petition to investigate the disappearance of five hundred people during the PNDC regime (Appiagyei-Atua, 2000, pp. 205–212). According to Appiagyei-Atua (2000), the petition was rejected on three grounds: It contravened with section 12(6) of Act 456 (CHRAJ-Ghana, 1993). This section states that “where a person by whom a complaint might have been made under this act has died or is for any sufficient reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family.” In this case, it was argued that the petitioner was neither a personal representative nor member of family of the individuals for whom the petition was filed and was therefore not considered an interested party. The commission argued that the complainant did not have sufficient interest according to section 13(2)(b)(iii) (Appiagyei-Atua, 2000). The implication is that in the case of a disappeared or dead individual, only a personal representative or family can stand in to register a complaint and so in the case of inability or unwillingness of the family to pursue the matter, other interested parties are prohibited from pursuing the matter.

Secondly, under 13(2), the commission may refuse to investigate or cease to investigate any complaint if the complaint relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the commission. In the Kwesi Pratt Jnr. Case, the complainant brought the case after the required time period. It is important to note that because of the political atmosphere and various other reasons, many of these cases

went unreported, albeit still strong on the memory of the victims. This clause therefore excluded a huge number of would be complainants or petitioners because some of the acts were committed decades ago.

Thirdly and perhaps most important for the truth commission, according to Appiagyei-Atua (2000), the mandate of the CHRAJ does not require or enable it to act on broad investigation into cases of disappearances and extra-judicial killings since 1982. He however argues that this interpretation could have been a tactical strategy by the commission to avoid dealing with politically sensitive issues or more pragmatically side-stepping the workload arising out of the cases. The commission therefore proposed that the petitioner apply for the setting up of a commission of inquiry.

5.2 Getting there: The National Reconciliation Commission Act 2002

According to Gyimah-Boadi (2002), Ghana's road to formal national reconciliation exercise dates back to the early 1990s. The then president Rawlings offered an apology for all past mistakes in 1992. In the same period, during the transition to democracy, amnesties were offered to some political prisoners and the exiles were allowed to return home. The National Commission for Civic Education (NCCE) also proposed a National Reconciliation Forum in 1999 which however did not receive the support of the government.

During the 2000 elections, the National Patriotic Party (NPP) recognised the local need for reconciliation and addressing past human rights abuses as a key concern and included the issue of national reconciliation in its manifesto during the campaigns. The presidential candidate, John Kufuor pledged to create an institution to facilitate national reconciliation (Hayner, 2011; Parmentier & Aciru, 2016; Valji, 2006). Following his victory, he began the process of establishing a truth commission.

The National Reconciliation Bill was passed in parliament in late 2001 and signed into law on 9 January 2002 as the National Reconciliation Act, 2002, Act 611 (Parliament of the Republic of Ghana, 2002). The Act established the National Reconciliation Commission to seek and promote national reconciliation among the Ghanaians by *“recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who have in any other manner been adversely affected by abuses and violation of their human rights arising from activities or in activities of public*

institutions and persons holding public office during periods of unconstitutional government to provide for related matter” (par 1).

From the statements recorded by the NRC, expectations from the NRC were varied. Many of the victims of the violations suffered long term effects including economic hardship, bankruptcy, family disintegration, lack of education for children and health problems. They therefore hoped to receive monetary compensation. Other reasons however included obtaining, setting the record straight and demanding justice against the perpetrators (National Reconciliation Commission, 2004). This resonates with the survey by CDD in which respondents expected that one of the outcomes of the NRC process would be the offer of compensation or reparation. The expectation was that this would be in form of cash, housing or victims’ families being taken care of (Centre for Democratic Development - Ghana, 2006). Respondents also expected to be able tell their stories and for the commission to promote reconciliation and punishment for perpetrators from the NRC.

5.2.1 Mandate of the National Reconciliation Commission

The Commission in section 3 of the NRC Act 2002 was tasked with seeking and promoting national reconciliation among Ghanaians;

“The object of the Commission is to seek and promote national reconciliation among the people of this country. (a) by establishing accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office during periods of unconstitutional government, namely from (i) 24th February 1966 to 21st August 1969 (ii) 13th January, 1972 to 23rd September 1979; and (iii) 31st December, 1981 to 6th January, 1993; and (b) by making recommendations to the President for redress of wrongs committed within the specified periods. Notwithstanding the periods specified in subsection (1) (a), the Commission may, on an application by any person, pursue the object set out in subsection (1) in respect of any other period between 6th March 1957 and 6th January 1993” (NRC Act 2002, Act 611, Section 3 (1) (2)).

The Act identified several functions for the commission which can be broadly grouped into investigative, educational and suggesting recommendations. Under the investigative function, they were mandated to investigate the violations, the context in

which abuses occurred, individual and public responsibility for violations, whether the violations were deliberately planned and executed and any other matters which would require investigation in order to promote national reconciliation. They were further expected to seek the assistance of the police or any other public or private institution or person for the purpose of investigation. For the educational aspect, the commission was expected to educate the public on its work by providing sufficient publicity as well as encourage public participation in the proceedings. In suggesting recommendations, the commission was expected to identify the victims of violations and abuse and make appropriate recommendations for redress.

Upon completion of the process, the commission was required to submit a complete report to the president. Besides availing information on the context of the violations and an accurate historical account of the investigations carried out, the commission was required to;

- i. Identify the victims of violations and abuse of human rights
- ii. Recommend the appropriate response to the specific needs of each victim or groups of victims
- iii. Suggest measures to prevent and avoid the repetition of such violations
- iv. Recommend reforms whether legal, political, administrative or otherwise.

The Act further directs the commission to suggest recommendations on setting up of a reparation and rehabilitation fund (NRC Act, 20 (2)(h) from which monetary compensation would be disbursed.

The commission was inaugurated on May 6th 2002. Mr. Justice Kweku Etrew Amua-Sekyi, a retired Supreme Court judge was selected as the Chairman. It comprised of nine members, all Ghanaians and appointed by the president in consultation with the Council of State, a non-partisan constitutional body that advises the president on appointment to public office and other matters prescribed by the constitution. The commission maintained both the mandate and time period prescribed in the NRC Act 2002.

The commission recorded statements from Ghanaians both within and outside Ghana. It received 4,240 statements from victims and witnesses and convened over 2000 public hearings. The commission grouped the human rights abuses and violations into 12 categories, namely: killings, both for civilians and security personnel. This included killings that occurred for individuals or in groups, executions and extra judicial killings;

disappearances and all the disappeared were presumed to be dead; torture, whether physical or mental; detention without trial; ill treatment which included a wide assortment of degrading treatment and punishment; invasion of property rights including seizure, confiscation or destruction of property; interference with the right to work, including dismissals and arbitrary releases from work; hostage taking; abuse of judicial process; violation of the right to die in dignity; and sexual violations (National Reconciliation Commission, 2004).

5.3 Reparations

The NRC drew its mandate to make recommendations for reparations from the NRC Act 2002, section 3(1)(b) that calls on it to “[make] recommendations to the president for redress of wrongs” and further in section 4(c) “identify and specify the victims of the violations and abuses and make appropriate recommendations for redress.”

This task is reiterated in the NRC report where it emphasises that;

“The law [NRC Act] required the Commission to recommend to the President appropriate measures to assuage the pain of, and make reparation to, those whose human rights were violated or abused during the mandate. The Commission was also required to recommend measures to prevent such occurrences in future.” (National Reconciliation Commission, 2004, p. 5)

The commission identified six objectives for its reparations policy. First, reparations are a *right* to individuals whose rights have been violated. These rights are enshrined in the 1992 constitution.³ The commission states that one of the principle objectives of the reparations policy is to “reinforce the citizens’ right to redress as well as respect for human rights, the rule of law and democratic accountability” (National Reconciliation Commission, 2004 (7.3.1.1), p. 171).

Secondly, the commission views reparation as a means to achieve *recognition* of both victimhood and accountability. It talks of the need to acknowledge the violations and crimes to which the victims were subjected to as a serious violation of human rights.

³ Chapter 5 on fundamental rights and freedoms and article 33(1) states that “where a person alleges that a provision of this constitution on fundamental human rights and freedoms has been, or is being, or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the high court for redress” (Government of Ghana, 1992)

The policy of recognition also calls for the responsible actors to be called to account for their acts hence be held accountable (National Reconciliation Commission, 2004 (7.3.1.2), p. 171).

Third, reparations are aimed at *repairing and rehabilitating* the victims. The commission recognises that the victims of these crimes have experienced negative and sometimes devastating effects as a result of their victimisation and therefore aim at alleviating their suffering.

The fourth objective is to *reform* the institutions that perpetrated the violations. The reparation package therefore acts as a basis for non-repetition through which “*the nation will be motivated to resolve that “Never Again” shall the State facilitate or preside over such gross human rights violations*” (National Reconciliation Commission, 2004 (7.3.1.4), p. 171)

The fifth objective of the reparation policy is for reparations to be viewed as a means of portraying equality in the Ghanaian society and ensuring respect for all individuals irrespective of the social standing. The commission aimed to recommend reparations for all individuals who had suffered abuse irrespective of their social or economic status in order to cultivate *respect*.

Finally, the commission aimed at recommending measures which were as *realistic* as possible to the resource constraints facing the Ghanaian state. They recognised the fact that reparations can never fully repair the damage nor restore the victims to the state they were in before the violations. There was a need to balance what could actually be provided with what would be considered an appropriate token of recognition and acknowledgment for the victims. It is thus with these considerations that the NRC recommended reparations in the form of monetary compensations, symbolic measures, social service benefits, community reparations and restitutions.

5.3.1 Break down of the Ghana NRC recommendation on reparation

The section on reparations is contained in Volume 1, Chapter 7 of the National Reconciliation Commission report. Broadly, it makes recommendations in five areas; symbolic, social service benefits, community reparations, restitution and monetary compensations as seen in table 1. The report was not explicit about who was responsible for some of the specific reparation measures. The general assumption

through the interpretation of the NRC mandate however that was the government would undertake the overall responsibility in directing the programme. Similarly, some of the specific categories of victims to benefit from the reparations was not explicitly indicated in the report. These ambiguities have been indicated using the phrase ‘not specified.’

Table 1: Summary of Ghana NRC's Recommendation for Reparation

Category	Specific	Directed at	Category of victims
Symbolic	Apology	President	Women, other victims, Yendi massacre of 1969 victims
		Heads of public institutions	All victims
		The executive branch	Families of the three murdered high court judges and retired army office (30 June 1982)
	Monuments and commemorative events	Not specified	Not specified
	1. National Monuments in Accra	Not specified	Not specified
	2. Monument in honour of Ghanaian woman	Not specified	Not specified
	3. Monuments in regional capitals	Not specified	Not specified
	4. One-off national reconciliation day	Not specified	Not specified
	1. Annual thanksgiving/remembrance day	Not specified	Not specified
	2. National Reconciliation memorabilia (stamps, coins, badges)	Not specified	Not specified
	3. Annual reconciliation lectures	Not specified	Not specified
Social Service benefits	Scholarship up to Senior Secondary School	Not specified	One child of: deceased, disappeared, disabled or trader whose goods were seized
	Health benefits 1. Join the National Health Insurance Scheme 2. Establish a Trauma and Counselling Centre in every Regional and District Hospital.	Not specified	Living with health problems
Community	Building of market in Namoo	Not specified	Border town of Namoo
Restitution	Property returns (lands, buildings)	Government returns or negotiations	Unlawful confiscation victims

		with third party owners	
	Restoration of good name	Not specified	Victims of false charges or accusations
	Flat sum to vehicle owners for seized or confiscated	Not specified	Victims of confiscated vehicles
Compensation	One off monetary payment	Not specified	Eligible victims

Summarised from: National Reconciliation Commission (2004, pp. 172–176)

5.3.1.1 Symbolic measures

This according to the commission is considered one of the most significant forms of reparations. During the hearing, the commission established four categories of petitioners. Some individuals were not interested in any awards which seemed to them like a payment for their suffering while another group was simply not interested because they had put the pain behind them. For some of the petitioners however, telling their story and knowing the truth about what happened to them or their loved ones was all they wanted. Another group of petitioners however clearly stated that they expected reparation for their suffering (p. 168). The commissioners recommended that the symbolic reparation be awarded together with other forms for meaningful impact. The symbolic measures recommended by the commission included the following:

Apology

The commission recommended that apologies can be both verbal and in the form of letters. The apology letters are to be signed by the president and given to the victims. In addition, apologies should be made by the heads of public institutions who were main actors in violation of rights, including the president, as the Head of State and Commander-in-Chief of the Ghana Armed Forces. These are to be broadcast live on radio and television. A special apology should also be made to the Ghanaian women.

In section 8.2.1-8.2.5, the commission recommended that apologies to be made to the following categories: The president should apologise to all victims of violations and abuses committed by holders of public office from 6th March 1957 to 6th January 1993, families of those killed, injured or maimed in the Yendi Massacre of 1969 and to the women of Ghana; Apology from the executive branch to the families of the High Court Judges and the retired army officer murdered 30th June 1982. Although it is not specified who should apologise, apologies should also be offered to families of all those who were killed or disappeared.

Additionally, apologies should also be made in conjunction with the restoration of the good name of individuals who were wrongly accused.

Monuments and commemorative events

Among the monuments to be built include:

- a. National monument built in Accra in honour of the killed, disappeared and unknown bearing the names of the victims, both known and unknown.
- b. Monument in honour of the Ghanaian woman.
- c. Monuments in regional capitals in honour of traders and other civilians
- d. A one-off national reconciliation day to unveil monuments and deliver apologies
- e. Annual remembrance/thanksgiving day
- f. National reconciliation memorabilia for instance, national reconciliation stamps, coins and badges.
- g. Annual reconciliation lectures with the aim of fostering respect for human rights, rule of law and democratic principles.

5.3.1.2 Social service benefits

The commission argued that from their findings, they recognised that some victims continued to suffer from medical conditions resulting from their abuses. A number of them had also not recovered economically and as a result, their children suffered from this dilemma. Reparations therefore also needed to be as realistic as possible and have real impact on the lives of the victims. These needs could be met through reparations in the form of access to social services. These types of benefits were recommended in two areas: Scholarships and health benefits.

Scholarships

This includes the education of one child up to senior secondary school level in a public school. The category to benefit from this award is a child born to a victim who is either deceased, disappeared, disabled or traders whose goods were seized.

Health benefits

This is directed to those who are living with health problems as a result of human rights violations. Their concerns should be taken care of by the National Health Insurance Scheme (NHIS) which was due to be established. The commission however does not detail the process of how this is to be carried out.

The Commission also recommended for the establishment of a trauma and counselling centre in every regional and district hospital.

5.3.1.3 Community reparation

The report directs this reparation to one specific recipient, the town of Namoo. According to the NRC report, the market which was located in the border town in the upper East region had to be shifted across the border into Burkina Faso due to unlawfulness experienced by traders. This deprived the people of Namoo of a means of livelihood as well as a means to enrich the Ghanaian economy. It was therefore recommended the construction of a market for Namoo town. It is important to point out that other markets were also destroyed, notably, Makola market in Accra. It is therefore not apparent from the report why only this market was singled out for the community reparation aspect.

5.3.1.4 Restitution

Restitution was considered both for property and individual reputation. The commission recommended for the return or restoration of properties that had been unlawfully confiscated, for instance, land or buildings. The exception was individuals who had unlawfully acquired multiple houses through loopholes or their status and had the houses confiscated (NRC, 2004 (7.4.2.1), p. 174).

Restitution was also in the form of restoration of the good name. Those whose reputation was destroyed through false charges or accusations were to have their good name restored. In addition, they were to receive a declaration for the restoration of their reputation as well as an apology letter signed by the president.

For items such as vehicles which had been confiscated or seized, a flat sum of money was to be paid irrespective of the make or number. This would be a symbolic gesture mainly for pragmatic reasons. This is because the vehicles may not be available for restoration. If they might have been available, the state in which they would have been would not enable restoration. Additionally, converting the value of the vehicles to the current market value would have proven too costly for the government and reparations programme.

5.3.1.5 Compensation

Compensation in the form of monetary one-off payment was to be made to eligible victims who were willing to access it. The payments range from one million Ghanaian Cedis to thirty million Ghanaian Cedis. Monetary payments could be paid for loss of life, torture, disability, detention, exile, sexual violations, ill treatment, seizure of property, confiscation or destruction of property, dismissals and peace keeping victims who suffered as a result of non-delivery of “CIF items” for personnel of peace keeping operations (NRC, 2004 (7.4.3.3) pp. 175–176).

The monetary compensations were to be awarded under the following conditions:

- i. A one-off payment
- ii. It should be available for those willing to access it
- iii. There is no cumulative compensation and so compensation will only be made for the severest violation or harm. This is for victims who fall under more than one category. However, those who suffered multiple violations under different regimes would in addition to being compensated for the severest harm, receive an additional two to three million Ghanaian Cedis.
- iv. Balancing the harm suffered and the ability to pay the proposed amount in consideration of the Ghanaian economy.
- v. Those who have already received compensation through other means are not eligible
- vi. Those who received partial compensation to receive a top-up.

5.3.2 Reparation and Rehabilitation Fund

Section 20 (2) (h) of the NRC Act 2002 recommended the setting up of a reparation and rehabilitation fund from which funds to run the reparation programme will be drawn. The commission endorsed the setting up of the reparations and rehabilitation fund and highlighted seven sources for generating revenue to build the fund. These include:

- i. Provision in the national budget towards paying reparation
- ii. Provision as part of the poverty alleviation
- iii. Percentage of Heavily Indebted Poor Countries funds (HIPC) towards reparations
- iv. Perpetrators' voluntary contribution
- v. Tax-deductible voluntary contributions from corporate bodies
- vi. Voluntary contributions from the public

- vii. Proceeds from sale of the report and other memorabilia, for instance, national reconciliation stamps, coins and badges.

The commission however does not elaborate on the frameworks or processes that are to be used to ensure that the recommended sources of income are made to work.

5.4 Post-National Reconciliation Commission

The NRC report was finalised and submitted to the government on October 12, 2004. It collected 4000 statements and held at least 2000 public hearings (Dovi, 2009; Perry & Sayndee, 2015). It also included testimonies from at least 80 perpetrators including former president Rawlings.

The Ghana NRC did not direct specific recommendations to definite bodies or institutions to implement, rather, all the recommendations were generally directed at the government and left to the discretion of the government to decide which ministries or institutions should be responsible for each. The report does not also suggest a follow-up committee to monitor and evaluate the progress of the government during the implementation of the recommendations.

The government thereby released a white paper in response to the recommendations of the NRC. In the following section, I highlight the reaction of the government on the issue of reparation for victims.

5.4.1 The government white paper

The Minister of Justice and Attorney-General, J. Ayikoi Otoo presented the government position regarding the findings and recommendations of the NRC in a government white paper on April, 2005 (Ghana Government, 2005). In a brief paragraph regarding the recommendation on reparation, the government agreed to the specific forms of reparation and the urgency expressed for implementing the recommendations on reparation.

The government also accepted the proposal to set up a reparation and rehabilitation fund and expressed its commitment to establishing it within the year (2005) and support its work as a “healing tool for Ghana.”

It further made a commitment to avail the resources to the fund to enable it to carry out the implementation. It directed that the reparation and rehabilitation fund would be responsible for implementing the reparation programme.

5.4.2 Follow up and implementation of the reparation recommendation

After the end of the NRC and submission of the report, there has not been any detailed study into what has happened to the recommendations, specifically on reparation. A survey was carried out by CDD-Ghana which was limited to the opinion of Ghanaians towards the NRC process including to the hearings, findings and the recommendations (Centre for Democratic Development-Ghana, 2006). Some of the studies have assessed the work of the NRC, including whether it has achieved aims such as reconciliation, democracy and rule of law (Alidu et al., 2009; Robert Kwame Ameh, 2006a, 2006b; Attafuah, 2004; Odartey-Wellington & Alhassan, 2016; Valji, 2006) while others have focused on more specific aspects of the NRC such as gender issues (Gyimah, 2009) and the role of civil society (Alidu & Ame, 2013).

Most of the literature on what happened to the reparations programme is from the media which provide brief highlights of what has taken place. An assessment of these reports shows the following.

The total number of victims ranges from 2,000 (Dovi, 2009; IRIN, 2006) to 3,000 (GhanaWeb, 2004; Perry & Sayndee, 2015). These are victims of human rights violations from 1957 up to 1992 although the majority of the victims claimed to have been abused during the Rawlings regime in the 1980s (GhanaWeb, 2004).

According to the (GhanaWeb, 2006c), a member of the “NRC implementation Team” is reported to have pointed out that despite 4,000 petitioners to the NRC being registered, only 2,514 would be eligible for reparations with 2,117 receiving monetary compensation. A later article in 2007 however mentions a different figure of 2,177 victims to benefit from the monetary compensation (GhanaWeb, 2007). The rest of the victims would either be reinstated or have their property returned

The government in October 2006 released 13.3 billion cedis (GhanaWeb, 2006b) for the reparation programme although another source has stated it as 13.5 billion cedis or \$1.5 million (GhanaWeb, 2006a; Kudzodzi, 2006). Payment commenced on 13th of the same month (GhanaWeb, 2006c). This amount was recommended by the

commission to cover the reparation programme based on the interviews, findings and the recommendations on reparation (Kudzodzi, 2006). The money was released to the Ministry of Justice, the ministry responsible for implementing the recommendations of the NRC.

According to GhanaWeb (2006a), the process of identification of properties for de-confiscation as recommended by the NRC under the property restitution recommendation was ongoing and in time the list and names of individuals and beneficiaries would be published. In a 2007 article, the Attorney General and Minister of Justice, Joe Gharney, is reported to have expressed the practical and financial difficulties surrounding property returns. This was mainly as a result of third party ownerships and individuals who had genuinely acquired the confiscated property but also that the government had not budgeted for compensation of property owners in case they could not get back their property. Property returns was therefore deemed a sensitive issue which needed to be handled on a case by case basis (GhanaWeb, 2007).

Claimant forms were published in the national newspaper including the names of the first 250 people to receive the reparations. This was meant to facilitate the payment process that was scheduled to end in December 2006 (IRIN, 2006). The payments began on 16 October 2006 (IRIN, 2006) and each claimant was paid between \$217 to \$3,300 (Dovi, 2009; IRIN, 2006).

IRIN further highlighted the issue of managing victims' expectations. Some victims expected to get the equivalent of what they lost or suffered at the existing bank rate which was not possible. Education and sensitisation was therefore a relevant topic identified by civil society during the reparations (IRIN, 2006).

As discussed above, the available literature regarding the follow up and implementation of the NRC recommendations is mainly sourced from snippets in the media. A detailed study of what happened after is therefore a significant addition to the Ghana case. From the above, monetary compensations were paid out to eligible victims but the process or perceptions of the victims and other stakeholders is not captured. The focus is also only on the monetary, and to a lesser extent the difficulties in property restitution but is however silent on all the other forms of reparation recommended by the NRC.

Conclusion

This chapter aimed to understand the background to the establishment of the truth commission mechanism in Ghana and how the commission defined reparation. It also analysed the response of the government and how the issue of post-truth commission is dealt with. It shows that the truth commission was considered a necessary endeavour for dealing with the past atrocities and attempting to facilitate national reconciliation. It also illustrates how interest in the commission lessens following the end of the proceedings.

Ghana's case highlights the expanding scope and flexibility of the truth telling mechanism in addressing past human crimes. It was established 10 years after the return to a constitutional government to deal with crimes that occurred over a 36 year period. The abuses were mainly committed by the state and state operatives and became institutionalised in the process.

The truth commission in Ghana was also a domestic initiative wholly funded by the government. The Commissioners were all Ghanaians and after the NRC, the government financed the reparation programme. The case however brings to light a number of concerns facing truth commissions such as the role of politics in the process. The Ghanaian case became politicised and caused divisions along party lines. The newly elected NPP government was accused of using the NRC to gain votes as well as discredit the previous government. Despite the perception of the NRC being a partisan tool, it did not rule out the fact that there was need to address past human rights abuses in the country and foster national reconciliation.

The truth commission operated over a two year period and produced a report containing its findings and recommendations, including a chapter on reparations. These comprised of symbolic, social service benefits, community reparations, restitution and monetary compensation. The total number of victims that petitioned to the commission was up to 4,000 individuals of whom at least half were eligible for monetary compensation. The rest of the victims were meant to benefit from the other forms. The government fully accepted the report and recommendations and two years after the submission of the report, released the money to start the monetary compensations. In contrast however, most of the other recommendations have stagnated.

Ghana's case reinforces the need for detailed and sustained studies into truth commission processes beyond the lifespan of the commission itself and the significance of a framework that can be used to study post-truth commission processes. For

instance, despite a fairly successful monetary compensation programme,⁴ there is very little information as to how this was carried out, the most accessible being through media reports. Other salient issues raised by Ghana's case concerns the political undertones that impact on both the work and implementation programmes as well as civil society and local interest in the processes.

⁴ The usage of successful in the context refers to the fact that the money was paid out to the intended beneficiaries as per the recommendation of the NRC.

CHAPTER 6: SIERRA LEONE: LONG ROAD TO REPARATION

6.0 Introduction

The 1991-2002 civil war in Sierra Leone captured international attention and received massive international input in resolving the conflict and during the transitional period. The truth commission was one of a number of mechanisms established to deal with the violations and promote reconciliation. It was packaged as a victim-centred effort to tell their stories and facilitate healing at individual, community and national levels. The commission reported extensively on the antecedents of the conflict and on the responsible parties in the violations. It further recommended reforms on a number of institutions as well as proposals on reparation and national reconciliation. This chapter examines the experience of Sierra Leone in linking truth commissions and the reparation programme. The discussion is divided into four parts: first it presents the background to the truth commission. Second, it discusses the set-up of the truth commission. In the third part, the framework for the recommendation on reparation and the follow up and implementation strategy is discussed. The fourth part presents the post-truth commission proceedings.

6.1 The War: Context for a Truth Commission

The 1991 - 2002 civil war has gone down in history as one of the bloodiest and most ruthless civil wars in Africa. It was both destructive and brutal (Reno, 2003), characterised by the use of child soldiers and horrendous abuses. The conflict was a period of massive suffering in which a large number of people lost their lives, families, body parts, property and livelihood (Hayner, 2007; Horowitz, 2006; Schabas, 2006).

Although this period is the one most referred to, conflict, both intra and inter-state plagued Sierra Leone for much of the colonial and post-colonial era. After approximately 169 years of formal British colonial rule, Sierra Leone attained independence on April 27 1961. This initially peaceful transition was short-lived as different political factions disagreed on how to move forward. This unrest displayed during the process of independence seemingly continued all through the political history of Sierra Leone which has been characterised by civil wars, coups and repression by the military and armed groups. The TRC report describes a complex history of slavery, immigration of freed slaves, colonialism and post-independence

squabbles which played a role in the making of Sierra Leone and the events that engulfed it (TRC, Sierra Leone, Vol II, 2004).

This chapter however is limited to the period from 1991, the temporal scope specified in the TRC mandate and selects specific key events, particularly those pertinent in furthering the discussion on the implementation of victims' reparation following the truth commission. I nonetheless concur with Ellis (2003) in his observation that it is futile to try to understand contemporary conflicts in the former colonial states in Africa without reflecting on the pre-cold war era, particularly the colonial and post-colonial struggles. As such, reference will occasionally be made to the pre-1991 period.

The "war of terror" (Dougherty, 2004) that raged for a decade bore the classic hallmarks of what (Kaldor, 2013) has referred to as "new wars." She refers to these wars as those which typically "take place in areas where authoritarian states have been greatly weakened...the distinction between state and non-state, public and private, external and internal, economic and political, and even war and peace are breaking down" (p. 2). Furthermore, the nature of most of these conflicts is such that they migrate beyond state borders and are fluid in terms of targets, aggressors and ideologies. They are characterised by among others, deliberate attacks on civilian populations and massive destruction of infrastructure. The acts of violence are designed to kill, terrorise and destroy the basis of community life (Fletcher & Weinstein, 2002).

The above reflection on the nature of contemporary warfare is especially useful in understanding the Sierra Leonean conflict. The TRC report asserts that this was a "self-destructive" conflict largely "committed by Sierra Leoneans against Sierra Leoneans." It targeted both individuals and groups aiming at dehumanising the victims (TRC, Sierra Leone, 2004, vol 2, p. 34). The report attributes responsibility to four main groups, the Revolutionary United Front (RUF), AFRC, Sierra Leone Army (SLA) and the Civil Defence Forces (CDF). The Economic Community of West African States Monitoring Group (ECOMOG), Special Security Division (SSD), Guinean Armed Forces (GAF) and a number of unknown perpetrators are also reported to have committed a number of violations. In reality however, the distinction among the fighting forces was often blurry with fighters sometimes even collaborating. A fitting moniker to this soldier-rebel collaboration was coined. They were referred to as "*sobel*s" or "soldiers by day, rebels by night" (Keen, 2005, p. 109; Reno, 2004).

By the end of the war, a significant number of the population had experienced loss in one form or another. “An estimated 50,000-75,000 people were dead, two million had been displaced, tens of thousands of women and girls had been raped or forced into sexual slavery, thousands of children had participated in the fighting, and some 4,000 people had been the victims of purposeful amputation” (Dougherty, 2004). The most notable rebel groups were the RUF, led by Foday Sankoh and AFRC. The government backed CDF and SLA were also implicated in human rights violations. The war managed to divide families, neighbours and friends as the rebels engaged them in atrocious acts against one another.⁵

In an effort to bring the war to an end, a series of peace agreements were drawn out between the government and different factions. These agreements were also vital for the course of events that took place during the transition to peace as discussed in the following section.

6.1.1 Peace Agreements

Negotiations for ceasefires and for peace in general featured prominently in the Sierra Leonean conflict. A number of peace agreements and accords were signed. The 1999 Lomé agreement, which is more widely known was preceded and followed by a number of other agreements, notably, the Abidjan Accord (1996) and the Abuja I (2000) and II (2001) (United States Institute of Peace, 2004).

6.1.1.1 Abidjan Peace Agreement (1996)

In 1995, international Alert, an NGO initiated peace talks between the government of Sierra Leone and RUF. This process was later taken over by the Organisation of African Unity (OAU). The agreement, signed on November 30, 1996 was the first comprehensive agreement following nine months of negotiations (Hayner, 2007).

Prior to the signing of this agreement, the RUF suffered defeat at the hands of Executive Outcomes (EO). This was a South African private security firm contracted by the National Provisional Ruling Council (NPRC) government of Sierra Leone to repel the RUF from Freetown area, secure government control of the diamond areas in Kono,

⁵ For detailed reports on the war, *see* Doyle (1999) BBC News Special report on Sierra Leone's civil war.

facilitate the country's return to stability and retrain the army and *Kamajor* militia (Truth and Reconciliation Commission of Sierra Leone, 2004, vol 3B, p. 68).⁶ Within ten days of their arrival, EO had driven the RUF out of Freetown and within a month, had cleared the diamond areas (Akinrinade, 2001). The presence of EO became a rallying point for the RUF during the negotiations who demanded for their withdrawal among other demands. The agreement thus stipulated that EO withdraws from the country within five weeks of signing the agreement. This withdrawal also applied to all mercenaries (Sierra Leone, 1996, article 12).

A prominent feature of the 1996 Accord was amnesty in exchange for peace. Article 14 ensured that "no official or judicial action is taken against any members of RUF/SL." It further guaranteed the full restoration of the civil and political rights and protection of former RUF/SL combatants, exiles and other persons outside the country because of reasons related to armed conflict. The peace agreement also called for among others, the total and immediate end of hostilities and disarmament, demobilisation and reintegration of all combatants (article 5-8), transformation of RUF into a political party (article 13) as well as institutional and public services reforms.

Article 3 called for the establishment of a commission for the consolidation of peace however its main role was limited to "supervising and monitoring the implementation and compliance of all the provisions contained in [the] peace agreement." This body was also mandated to establish among others a citizens' consultative conference, to be held once a year and a trust fund for the consolidation of peace. An optimistic interpretation of this article would be that they presented an awareness of the inclusion of the rest of the citizens especially in relation to the citizens' consultative conference. However, in reality it offered extremely limited avenues for citizen participation, particularly victims of the conflict.

On the whole, the issue of victims received very little attention and the agreement appeared to focus on the combatants and combatants' concerns. Bangura (1997) in relation to the immunity clauses and the lack of reference to the atrocities committed against the non-combatants argues that considering that all forms of redress had been closed, it would only be fair to make an "effort to balance this provision [article 14]

⁶ See also Francis (1999) for a discussion on Executive Outcomes and other mercenary activities in Sierra Leone and on a general discussion on the privatisation of national security.

with the need for a truth commission which will not seek to punish RUF...but which will mandate RUF and other actors to explain to the public the atrocities they have committed while prosecuting the war” (p. 76).

The RUF never complied with the terms of the agreement. Reno (2003) speculates that the RUF used the peace deal as a delaying tactic to recoup and regain their military strength. Akinrinade (2001) on the other hand hypothesises that the amnesty deals provoked further abuses since it made the rebels presume they could always negotiate another amnesty. According to the TRC, former president Kabbah refers to the signing of the Abidjan Accord as a deception on the part of the RUF and a tactic to reduce international pressure on RUF and create space to regroup (TRC, Sierra Leone, 2004b, vol 3B, p. 71). In the end, the accord was not implemented and fighting resumed within two months of signing (Gberie, 2000).

6.1.1.2 Conakry Peace Plan (1997)

According to Mustapha & Bangura (2010), disarray within the RUF followed the signing of the Abidjan Accord. The RUF split into two groups, pro and against Foday Sankoh. The Splinter group accused the leader, Foday Sankoh of attempting to foil the agreement and therefore disassociated themselves from him. In the midst of the chaos, Johnny Paul Koroma initiated a violent coup that led to the overthrow of President Tejan Kabbah in May 1997 and formed a coalition government with members of RUF called the Armed Forces Revolutionary Council.

The violence and abuses during this period prompted the ECOWAS to initiate peace proceedings. Mustapha & Bangura (2010) hypothesise that the RUF/AFRC coalition was met with opposition by Sierra Leoneans which prompted them to sign the six months peace plan to assuage opposition to their regime.

This agreement was unique in that it was signed between AFRC and the ECOWAS committee of five on Sierra Leone rather than the deposed government. The Committee of Five consisted of Nigerian and Guinean Foreign ministers and Representative of the OAU and UN (Sierra Leone, 1997).

Like the previous agreement, this accord paid scant attention to the victims but rather focused on appeasing the combatants. It further called for an immediate cessation of hostilities and the reinstatement of the legitimate government of President Tejan

Kabbah within a period of six months. It also specified power-sharing arrangements as well as a DDR programme and amnesty for the participants of the 25 May 1997 coup.

Akinrinade (2001) and Mustapha & Bangura (2010) point out that the AFRC/RUF continued to flaunt the terms of this peace plan, particularly the plans to quit power peacefully and reinstate the rightly elected but ousted leader Kabbah.

This peace plan suffered the same fate as the previous one. The ECOMOG forces forcefully ejected the military junta and carried out mob killings of perceived supporters. The reinstated government further instigated military trials and executed twenty four soldiers found guilty while at the same time disbanding the army.

The end of this peace plan was another missed opportunity for addressing victims' needs. Rather, the military government, reinstated government, ECOMOG and the Civil Defense Forces continued to use the civilians as pawns, launching indiscriminate and wanton attacks against them.

6.1.1.3 Lomé Peace Accord (1999)

Against the background of failed peace talks, continued violence and the absence of immediate military solution, the government of President Kabbah faced pressure from Nigeria, Ghana, Guinea and Mali who were contributing to the ECOMOG operations to negotiate a solution with the rebels. The pressure also mounted from the international community and civil society organisations. A unique feature about the Lomé talks was the robust civil society participation and input (Hayner, 2007; Rashid, 2000). The agreement was signed on 7 July 1999.

In comparison with the previous two agreements, in both the content and participation, the Lomé peace agreement reflected an attempt to approach the negotiations from a broader perspective (Sierra Leone, 1999). The delegates to the proceeding were grouped into three committees; military and security committee, humanitarian and human rights committee and socio-economic issues and political concerns committee. The agreement addressed seven broad areas. These included ceasefire, power sharing, reconciliation, the constitution, military issues, human rights issues and implementation frameworks of the agreement (Rashid, 2000, pp. 34–35). For this discussion however, I have identified three major components which I argue

play into the processes that have impacted on the later reparation for victims efforts. These are the amnesty provisions, TRC provisions and the war victims' provisions.

6.1.1.3.1 The Amnesty provisions in the Lomé agreement

Article IX of the Lomé agreement called for blanket pardon and amnesty with the aim of bringing "lasting peace to Sierra Leone." These clauses authorised the government to "take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon" (article IX(1). "Absolute and free pardon and reprieve" would also be granted to all "combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement" (article IX(2). In article IX (3), the government is tasked to "ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement." It further provides for legislative and other measures necessary to guarantee immunity "to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict."

In reaction to these sweeping amnesty clauses, the special representative to the UN attached a disclaimer on the UN's interpretation of the clauses stating that "article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law" (United Nations Security Council, 1999).

The amnesty clauses were also a rallying ground for human rights groups outraged at what they viewed as the government making deals with the rebels which appeared to reward the rebels (Doyle, 2000). Kalyvas (2001, p. 101) argues that these groups opposed to the amnesty "believed that the rebels were violent criminals and not political revolutionaries and that it was therefore immoral to grant them amnesty and invite them to participate in the new government." Some groups however stressed that anything was preferable to continued war and bloodshed especially in the face of no other options presenting themselves (Akinrinade, 2001; Doyle, 2000).

The Amnesty provisions placed the government between a rock and a hard place. According to Hayner (2007), this seemed like the only logical solution given the military weakness of the government and the real fear of continued fighting when

presented with threat of possible future prosecutions for the combatants. The rebels needed to be “attracted to the negotiation table” at all costs (p. 12).⁷

A related clause that did not attract as much attention relates to prisoners of war. Article XXI states that “all political prisoners of war as well as all non-combatants shall be released immediately and unconditionally by both parties.” This applied to all sides of the conflict. There is not much discussion relating to this however it is possible to assume that a number of the prisoners of war were party to the commitment of atrocities against civilian populations given the clashes between government and rebel groups. On the other hand, they could be victims of illegal detentions, and if this is the case, the agreement remains silent on any mechanisms for redress.

A reflection on the amnesty clauses portrays the tough choices actors make in attempts to resolve conflicts and the compromises and concessions that get made. Often the focus is on the volatile groups which pose a real threat to stability. As shown by the Sierra Leonean case, the victims are expected to remain contented with the immediate cessation of hostilities which is an immediate real need as shown by several authors who pointed out that many Sierra Leoneans expressed the view to just give the rebels what they want as long as they stop the war and killing them (O’Flaherty, 2004, 2005).

As such, demands for redress tended not to be a priority because there was a possibility that they could destabilise the peace making process. A departure from the previous agreements, as elaborated in the next discussion is the inclusion of victims’ needs, specifically, the need to know the truth.

6.1.1.3.2 The Truth and Reconciliation provisions in the Lomé agreement

A truth and reconciliation commission was one of the structures suggested for facilitating national reconciliation and the consolidation of peace in the Lomé peace agreement.

Article XXVI(1) called for the establishment of a truth and reconciliation commission to “address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the

⁷ *see also* O’Flaherty (2004, 2005)

past in order to facilitate genuine healing and reconciliation.” The agreement restricts the time frame to human rights violations from 1991 to the signing of the agreement.

In reference to the functions of the commission, the agreement calls on the commission to “among other things, recommend measures to be taken for the rehabilitation of the victims of human rights violations (Article XXVI (2)).

In terms of the composition, the agreement recommends for the members to be drawn from a “cross section of Sierra Leonean society with the participation and some technical support of the international community.” In the same article, it recommends that this commission should be established within ninety days of the signing of the agreement and within twelve months submit the report to the government (Article XXVI (3)).

Even with the explicit time frames for the establishment and report submission, it is only until February 2000, roughly seven months later that the TRC Act was passed. It took another two years for the commission members to be appointed and for the actual work of the commission to start, in 2002.

Among other scholars, (Hayner (2007) argues that this delay was a result of continued conflict after the signing of the agreement and the fact that pursuing the quest for truth was potentially dangerous in the context of the fragile peace process. The combatants continued to violate the ceasefire and did not comply with the DDR provisions. However, following two new agreements, the Abuja agreement in November 2000 on a recommitment to the Lomé agreement and detailing a new ceasefire (Sierra Leone, 2000a) and May 2001 joint committee agreement (Sierra Leone, 2001) which reinforced the commitment to peace and kick started the DDR process, attention could finally be turned to the TRC.

In retrospect, this delay of what was considered non-volatile aspects such as the pursuit of truth continued to characterise government response and commitment to victims and their demands.

6.1.1.3.3 War victims’ provisions in the Lomé agreement

In relation to the truth seeking clauses, and again in contrast to the previous two peace agreements, the Lomé agreement specifically makes reference to victims of the war.

The Abidjan agreement (1996) briefly refers to war victims for special attention in the pursuit of post conflict reconstruction in article 22 which states that

“In the pursuit of the reconstruction, rehabilitation and socio-economic development of Sierra Leone as a matter of the utmost priority, special attention shall be given to rural and urban poor areas, war victims, disabled persons and other vulnerable groups. The Government in conjunction with the Committee for Demobilization and Resettlement shall cooperate with all political parties and movements, including the RUF/SL, to raise resources internationally for these objectives during the initial phase of the consolidation of peace” (Sierra Leone, 1996).

The Lomé agreement however delves much deeper into the issue of victims and dealing with victims needs in the post-conflict phase. In article VI, the agreement calls for a commission for the consolidation of peace to be established within two weeks of the signing of the agreement. The duty of this commission, among others was to implement a post-conflict programme that includes victims of the war. It is worth noting that in the nine structures proposed for facilitating national reconciliation and consolidation of peace, only one directly relates to victims, which is structure nine on the truth and reconciliation commission, discussed in the preceding section.

Article XXVIII (2) also points out that women have been particularly victimised during the war and as such calls for special attention to their needs and potentials in formulating and implementing a national rehabilitation, reconstruction and development programmes. The plight of women was further drawn attention to in the TRC proceedings and as discussed further on, women victims were also identified for specific reparation benefits.

A further brief reference to war victims is included in article XXIX where it calls on the “government, with the support of the international community [to] design and implement a programme for the rehabilitation of war victims. For this purpose, a special fund shall be set up.” There however is not any further elaboration on this clause which raises speculation on where and how the funds will be drawn as well as questions of commitment towards availing resources for the fund.

This vagueness and ambiguity characterising the special fund and the agreement in general is picked on by Melrose (2009) who is critical on the impact of this clause. According to him, it lacked specific objectives, purpose and source of funding. He

further points out the unwillingness of Sierra Leone to provide token resources towards the fund and other reforms.

Despite the progressive framing and approach to the Lomé agreement, it faced similar setbacks in terms of compliance to the clauses and implementation. According to Hayner (2007), there was slow implementation and a near collapse of the 1999 accord. The RUF did not commit to the agreement and violated several clauses, most specifically on the ceasefire. They resisted disarmament and took UN soldiers hostage in 2000. However, rapid international intervention, including the deployment of one thousand British troops and the strengthening of the UN forces prevented a complete breakdown (Bangura, 1999; Kabba, 2013).

The significance of these peace agreements with respect to this research is that it portrays how victims and reparation of victims did not appear to be a priority in the peace making process. All parties were particularly focused on bringing the war to an end and using whatever it took to achieve that end. Clearly, the rebels maintained a formidable threat. By the time of signing of the Lomé agreement, they had taken over and controlled at least two thirds of the country. They therefore had a strong bargaining chip to bring to the negotiating table. The victims on the other had obviously posed no threat, more so, any demands on redress could have been misinterpreted hence jeopardising the peace process.

In the earlier peace negotiations, there are no reports of victims' demands or victim oriented organisations advocating for the consideration of victims. However, with the Lomé negotiations, there was a visible presence of civil society both local and international. These opposed the blanket amnesty provisions but they also advocated for the inclusion of victims in the negotiations resulting in the truth seeking and special fund for war victims' provisions.

6.2 Frame work for the Truth and Reconciliation Commission: The TRC Act

The Truth and Reconciliation Commission Act 2000 (Sierra Leone, 2000b) was enacted to establish the Truth and Reconciliation Commission (TRC). The Act is made of five parts; part 1 deals with the definitional issues. Part 2 details the framework for the establishment of the commission highlighting the composition and structure. In part 3, the Act clarifies the object for the establishment, functions and the reach of the commission. Part 4 discusses the administrative set-up and part 5 deals with the steps

to be taken after the end of the commission's operations. In this section, I restrict my discussion to the sections that deal with reparation and on the follow up and implementation structures.

According to Hayner (2011, pp. 75–77), the TRC Act is a critical instrument as it defines the powers and reach of a commission. She points out that these 'terms of reference' can impact on the functioning of TRCs. They can either be restrictive and limiting for instance to particular crimes, victims, perpetrators or events, or they can be broad and flexible. A broad and flexible mandate can create an opportunity for the commissioners to define the scope of their investigations whereas a stricter term of reference may limit the range of investigation and purpose of the commission.

The SLTRC Act can be considered to have adopted a relatively broad and flexible approach to defining the mandate of the commission. It resulted from the Lomé agreement which specified the mandate under section XXVI. According to the TRC Act 2000 in article 6(1), the object of which the TRC was established was to:

"Create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity; to respond to the needs of the victims, to promote healing and reconciliation, and to prevent a repetition of the violations and abuses suffered."

In order to respond to these tasks, the functions of the TRC under article 6(2) were defined as: Investigative – research on the causes, nature and extent of the violations and abuses; Reporting – provide an account on the violations; and Reconciliatory - enable a conducive climate to promote reconciliation by providing an opportunity for both victims and perpetrators to share their experiences and engage in constructive interchange.

6.2.1 Reparation in the TRC Act

At no point does the Act refer specifically to reparation using the term 'reparation,' rather, it makes use of phrases that could be inferred to as reparation such as 'responding to needs,' 'restoring human dignity' and promoting reconciliation. In defining the object of the commission, it calls on the commission to '[respond] to the needs of victims (article 6(1)). In line with this, it directs the commission in article

15(2), to make recommendations needed to achieve the object of the commission as stated in article 6(1). Similarly, article 6(2)(b) calls on it 'to work to help restore the human dignity of victims and promote reconciliation.' In the same article, it however specifies that the means of achieving this is by providing space for narratives of both victims and perpetrators and "creating a climate which fosters constructive interchange between victims and perpetrators." Although establishing the truth may be considered reparation from the broad perspective, this was not particularly significant to the specific reparation recommended by the commission although they similarly argue for the restoration of dignity and reconciliation as the impetus for the specific reparation.

A more concrete reference to reparation is made in article 7(6) which stipulates that 'the commission may provide information or recommendations to or regarding the special fund for war victims provided for in article XXIX of the Lomé peace agreement or otherwise assist the fund in any manner the commission considers appropriate.' It however further emphasises in Article 7(6) that the commission does not have any responsibility towards the said special fund as it "shall not exercise any control over the operations or disbursements of that fund."

As noted with the Lomé agreement, this cursory reference to the fund with no definition or elaboration on its role, reach or even specific beneficiaries can be alluded as an oversight on the drafters. The fund could have potentially been a rich resource for kick-starting and sustaining the reparation packages. In contrast to the South African commission which played a significant role in disbursing interim measures, this act takes away such a responsibility. Whereas this was a pragmatic move in trying to get the commission not getting bogged down by payments, it also played against them. The act of not disbursing material or monetary benefits reinforced resentment towards the commission from some sections of the population. As presented by a number of authors, victims often attached their participation in the commission to the expectation of immediate benefits or refunds (Kelsall, 2005; Millar, 2010, 2011, Shaw, 2005, 2007).

6.2.2 Follow-up and implementation framework in the TRC Act

Hayner (2011) highlights a critical challenge facing truth commissions, that is, the weak implementation record of its recommendations. In her discussion, she points out that even truth commissions which have presented relatively strong recommendations

have faced a laxity in implementation. The TRC Act briefly touches upon the post TRC period but does not provide a comprehensive approach into the follow up and implementation process.

The Act in article 19 calls on the president to dissolve the commission within three months of the submission of the report to the president. It is clear from this article that the commission ceases to exist and there are no additional roles and functions for the commissioners or staff of the commission. In addition to this, there is also prospect of the commission transitioning into an implementation or enforcement mechanism. Despite this finality to the functions of the commission, the Act however attempts to address the issue of continuity as elaborated below.

Under article 15 (1, 2), the commission was tasked with submitting a report of its work to the president at the end of its operations. The report includes a summary of the findings and recommendations. Copies or summaries of the report are also to be made available to the wider audience and public by the commission while the president facilitates the submission of a copy to the UN Secretary General and parliament.

In article 17, the act calls on the government to *“faithfully and timeously implement the recommendations of the report that are directed at state bodies and encourage or facilitate the implementation of any recommendations that may be directed at others.”* Besides the ‘faithfully and timeously’ there is no further definitions or more specific time frame of what it means and contains. As such, this leaves it open to varied interpretations.

Article 18 tasked the government with establishing a follow up committee upon the publication of the report to monitor the implementation of the recommendations and to facilitate their implementation. The follow up committee is to be comprised of the moral guarantors of the Lomé peace agreement. The government is mandated to provide quarterly reports to the follow-up committee in which it summaries the steps taken towards implementation of the recommendations and the follow up committee in turn publishes the reports and reports to the public quarterly its evaluation of the government efforts.

6.2.3 The Truth Commission

Following an elaborate process of nominations, public campaigns and community involvement, Bishop Joseph Christian Humper was selected the Chairman of the Commission. On November 2002, the TRC finally began its operations. It comprised of seven members, four of whom were citizens of Sierra Leone and three were non-citizens.

The commission identifies its objective as

“to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered” (TRC, Sierra Leone, 2004a, p. 10).

By the time the commission concluded its hearings, it had collected between 7,000 (Conibere et al., 2004) and 9,000 (Hayner, 2007) testimonies from Sierra Leoneans, living in Sierra Leone and also as refugees in Gambia, Guinea and Nigeria and from both victims and perpetrators. The commission sought to appear as broad based as possible by attempting to engage in all the districts in the country. In the end however, nine out of the one hundred and forty nine districts were left out due to security and accessibility concerns (Conibere et al., 2004, Hayner, 2007).

The final report was submitted to the President on October 5, 2004 as stipulated in the TRC Act 2000, Section 15(1) and presented to the UN Security Council on October 27, 2004 (TRC Act 2000 Section 16(2)).

6.3 Recommendations of the Commission on reparation

According to the TRC Act 2000 in article 15(2), the TRC was required to “make recommendations concerning reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the commission.” The aims of the recommendation are two-fold; to address the underlying causes of the conflict and ‘remedying particular wrongs committed against specific groups’ (TRC, Sierra Leone, 2004b, p. 121). The first aim is in line with the finding which identified

structural and institutional shortcomings as some of the central causes of the war. These included corruption, overwhelming control of the executive, colonialism effects, subverting traditional systems, abuse of death penalty and misuse of emergency powers against dissidents (TRC, Sierra Leone, Vol II, 2004, pp. 25-109).

Salient among the findings was that certain groups found themselves persistently targeted and were highly vulnerable, an example being women and children. Some of the violations also impacted more heavily upon the physical and psychological abilities and capabilities of the victims.

In terms of expected deliverables, the report divided the recommendations into three categories: 'imperative', 'work towards' and 'seriously consider'.

The 'imperative' recommendations are those that 'ought to be implemented immediately or as soon as possible ... [they] fall strictly within the peremptory obligation as stated in the Act. The government is required to implement these recommendations "faithfully and timeously."' The 'imperative' recommendations are those that 'establish and uphold rights and values' and the commission tasks the follow-up committee to monitor their implementation closely and regularly (TRC, Sierra Leone, Vol II, 2004, p.119).

The 'work towards' recommendations are categories where 'the government is expected to put in place the building blocks to make the ultimate fulfilment of the recommendation.' Unlike the 'imperative' recommendations, these have a less stringent time frame for implementation; however, they are required to be implemented within a 'reasonable time period.' Here, the role of the follow-up committee is to maintain an on-going monitoring of the government's performance (TRC, Sierra Leone, Vol II, 2004, p. 121).

The 'seriously consider' recommendations category comprise of those that the government does not have an obligation to implement. It is however expected to thoroughly evaluate these recommendations. The follow-up committee is required to provide occasional monitoring and there is no specific time frame within which to implement these.

The following section details the content of two elements; the recommendations for victims' reparation and the recommendations for follow-up and implementation frameworks.

6.3.1 Victims Reparation

The issue of reparations is extensively covered by the commission in its report. Chapter four of the TRC report, volume Two has especially been dedicated to address the question of reparation. According to the report, the TRC Act (2000) does not explicitly use the term 'reparations'. It instead refers to addressing the needs of the victims, restoring the human dignity of the victims and promote healing and reconciliation (TRC, Sierra Leone, Vol II, 2004, p. 227). The commissioners however interpreted 'addressing needs of the victims' and 'restoring the human dignity' broadly to include measures aimed at repairing and restoring the harm that had been inflicted upon the victims.

The TRC further acknowledged that reparations are necessary to enable some individuals to move beyond the position they find themselves in as a result of the war. It is not enough to attempt forgiveness and reconciliation when the conditions are not conducive to break the cycle of suffering. The consequences of war and victimisation such as humiliation, dependency and social exclusion often lead to re-victimisation of the victims thereby creating conditions under which thoughts of revenge fester and grow (TRC, Sierra Leone, Vol I, 2004, p. 84).

6.3.2 Framework for victims' reparation

The TRC draws its directive to recommend reparation from article XXVI of Lomé peace agreement which directs the commission to "among other things recommend measures to be taken for the rehabilitation of victims of human rights violations." In article XXIX it further calls for the design and implementation of a programme for the rehabilitation of war victims for which a special fund for war victims would be set up.

These two articles are further picked up by the TRC Act of 2000. Article 6(2)(b) directs the commission to help restore the human dignity of victims and promote reconciliation. Under article 7(6), the commission is directed to make recommendations for the special fund for victims provided for by the Lomé agreement.

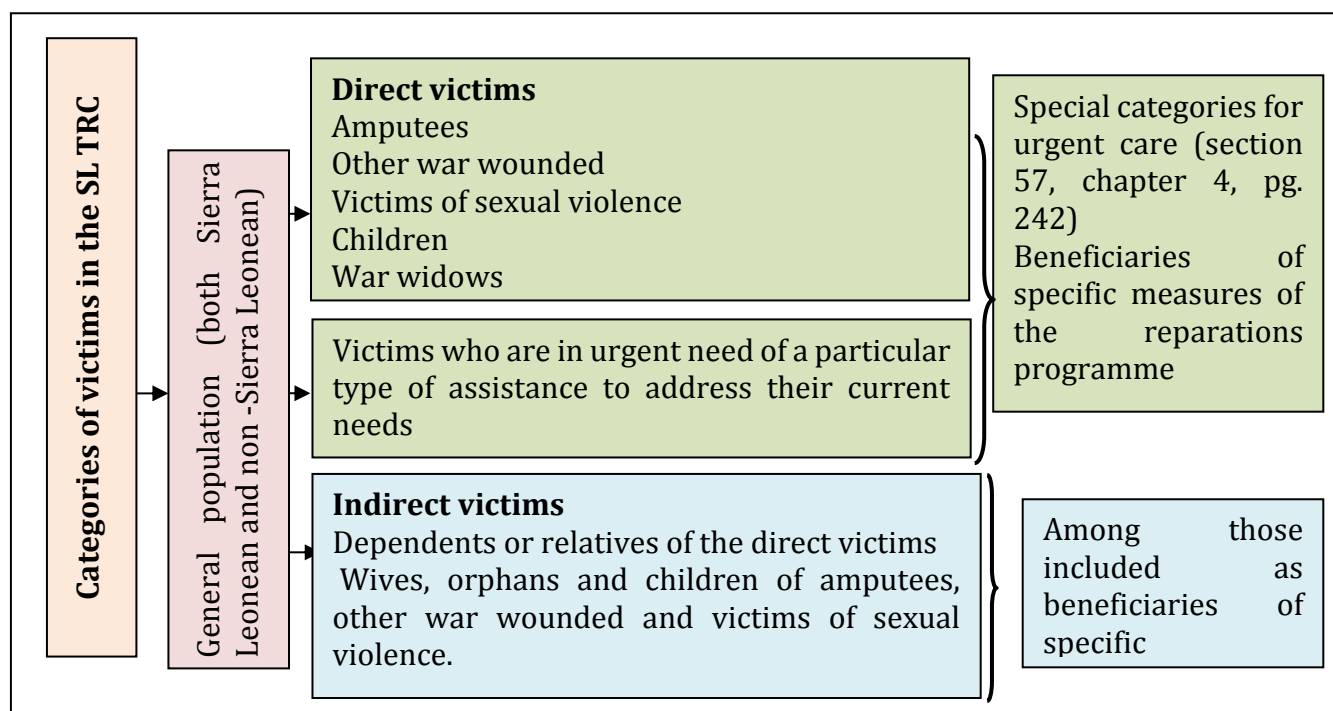
The commission is further directed to make recommendations concerning the reforms and other measures, legal, administrative or otherwise needed to achieve the object of the commission, including those that respond to the needs of the victims and promote healing and reconciliation (article 15(2)).

It is important to note that the issue of reparations in the report are categorised under the ‘work towards’ recommendations. In retrospect it would be useful to consider this framing of the reparation recommendation against the enthusiasm placed on their implementation.

6.3.2.1 Categories of Victims

The report distinguishes between three broad categories of victims as shown in figure 1 below; the general population, direct victims eligible for the specific reparation and indirect victims, some of whom are also eligible for reparation.

Figure 1: Break down of the victims by The Commission



Adapted from Truth and Reconciliation Commission, Sierra Leone, Vol II, (2004, pp. 242-261)

In the first instance, the report considered that all individuals connected to Sierra Leone, whether citizens or non-citizens have to an extent suffered from the conflict and

are therefore all victims. It however also recognised that it would not be feasible to try and make individual payments to every individual who is considered a victim. To counteract this, it adopted a two-pronged strategy: prioritising beneficiaries and a reparation strategy based on the provision of social service packages.

6.3.2.2 Beneficiary prioritisation

The commission made a selection of the most vulnerable victims as beneficiaries of the reparation programme. These are “victims who were particularly vulnerable because of the human rights violations they had suffered and the harm that they continued to live with” (TRC, Sierra Leone, 2004b, p. 229). Most vulnerable victims were also to be determined by the current needs of the victims in order to determine what benefits to accord them.

It further proposed that the reparation programme for the most vulnerable victims should focus on rehabilitation of the victims and symbolic measures (exhumations, proper burials, laying of tombstones, national memorial services, pouring of libations, carrying out of traditional ceremonies and the erection of appropriate memorials (TRC, Sierra Leone, 2004b, p. 229).

Under this most vulnerable victims group, the commission distinguished between the direct victims and indirect victims. The most vulnerable victims included; the amputees, other war wounded,⁸ victims of sexual violence, children and war widows. The direct victims are those upon which the actual harm was inflicted while the indirect victims comprise of their dependents.

The report emphasises that reparations are intended to deal with victims needs and include interventions in the following areas: health, pensions, education, skills training and micro-credit, community reparations and symbolic reparations.

⁸ ‘Other war wounded’ are victims who have become temporarily or permanently physically disabled, either totally or partially as a consequence of abuse other than amputation. For example, ‘victims who have received lacerations, lost body parts other than limbs (fingers, ears, lips and toes), gunshot wounds, bullets or shell fragmentation ... totally or partially disabled as a consequence of a human rights violation,’ (TRC, Sierra Leone, vol II, 2004, p. 194).

6.3.2.3 Provision of social service packages

Rather than focusing on individual reparation payments, the commission selected to concentrate on the provision of social service packages based on three arguments.

First, social service packages were the most favoured choice by victims during the testimonies. They requested for assistance or redress in the form of social services rather than individual cash payments (TRC, Sierra Leone, vol II, 2004, p. 235, 245).

Second, in consideration of the available resources, it was perceived that individual payments would go beyond the means of the state to implement due to other demanding needs in the post war recovery effort. It argued that “any amount awarded as an individual reparations payment would probably only serve the immediate needs of the victim. Any recommendation enshrined in a service package offered more opportunity for sustainable assistance than one time cash payments” (TRC, Sierra Leone, vol II, 2004, p. 245).

Third, the prevailing conditions of poverty would make individual cash payments lead to strife and division rather than a sense of social solidarity as is the intention of reparations programmes.

To be eligible for the reparation benefits, the individuals have to prove that they suffered the harm as a direct consequence of the war between 23 March, 1991 and 1 March, 2002. Both citizens and non-citizens were deemed eligible for reparations if they fulfilled the eligibility criteria.

The TRC additionally differentiated between the elements which would bring about reparative effects and those that were direct benefits for specific categories it identified as most vulnerable. The recommendations within the framework of institutional reforms, national reconciliation and aspects of symbolic reparations would target the wider range of victims while specific reparations which were more narrowly defined were aimed at addressing the direct harms certain individuals faced and continue to live with. The following section analyses the specific measures of the reparations programme.

6.3.3 Break-down of the recommendations on Reparation

The commission made recommendations for specific reparation measures in the following areas as highlighted in the table 1: health care; education; pensions; skills training and micro-credit/projects; community and symbolic reparations.

Table 2: Summary of Sierra Leone TRC's Recommendation for Reparation

Area	Target	Type of reparation	Line Ministry
Health	Amputees	Free physical health care Free prosthetic and orthotic devices Free rehabilitation services Training (prosthetic devices) Free physiotherapy and occupational therapy Training of technicians	Ministry of Health and Sanitation
	Wives/husbands of amputees	Free primary health care	
	Children	Free primary health care	
	Other war wounded	Medical support	
	Wives/husbands	Free primary health care	
	Children	Free Primary health care	
	Adult and child victims of sexual violence	Free physical health care Fistula surgery and gyn. health HIV/AIDS testing and treatment	
		scar removal	
Pensions	adult amputees	Monthly payments (cash payments to eligible beneficiaries (amputees, 50% reduced earning capacity and adult victims of sexual violence))	Ministry of Finance
	war wounded		
	sexual violence		
Education	All children	Free education at basic level	Ministry of education, science and technology
	Specific (Children of direct victims or children victims)	Free secondary level education Scholarship to tertiary schools	
Skills training & Micro-credit/micro-projects	All	Skills training and micro credits (skills training and business management programmes, micro credit)	Ministry of Labour and NaCSA
Community reparations	General community	Infrastructure development (reconstruction and rehabilitation of areas that suffered the most destruction)	Ministry of economic and development

			planning and ministry of lands
Symbolic	General community and specific beneficiaries	Acknowledgement, memorials, apologies, commemoration ceremonies and dates Dissemination of the reparations programme on large scale translated into local languages Identification of Mass graves and reburials	Monuments and Relics commission

Summarised from TRC, Sierra Leone, Vol II, 2004, pp. 251-265

As shown in table 1, the recommendations on reparation are spread out in seven different areas: Health care, pensions, education, skills training and micro-credit/micro-projects, community reparations, symbolic benefits and individual benefits. These programmes were directed at the five categories deemed as the most vulnerable groups comprising of amputees, other war wounded, children, women victims of sexual violence and war widows. Below is a summary of the recommendations contained in the report (TRC, Sierra Leone, vol. 2, 2004, pp. 252–270).

6.3.3.1 Health care

According to the commission, the effect of the war on the health system, among others was its effect on the physical and mental health of the people, disruptions in terms of damage to facilities, loss of personnel and other resources. The biggest burden for most Sierra Leoneans is accessibility of health services due to the high costs. The health care programme is therefore designed around removing the prohibitive costs, strengthening the services and availing accessibility. The health care support proposed included the provision of physical and mental health care, including trauma counselling for eligible victims. Thus four basic short term plans were identified:

- i. Identify medical centres with expertise in the needs of a particular condition
- ii. Provide transportation
- iii. Prioritise basing on most vulnerable identified by the commission
- iv. Recruitment of temporary internationally trained physicians

Amputees

First, the commission recommended a lifetime access to free physical health care, including surgeries. This service is extended to immediate family members such as wives and children under the age of 18 years. The facilities should be accessible at all

levels, that is, primary, district and tertiary units although the Connaught hospital in Freetown would be the coordinating centre for all of the amputees. It also calls for raising awareness about the centres where health care is available for the amputees and providing the necessary transportation.

Second, the amputees would also be provided with free prosthetic and orthotic devices. The government is to act as a coordinating agent to facilitate access, assist organisations that train the technicians and offer incentives to retain trained technicians.

Third, the amputees to be provided free rehabilitation, physiotherapy and occupational therapy services as well as training on the use, repair and maintenance of the prosthetics. This would include the government providing assistance to the existing rehabilitation centres including those established by NGOs, establishing rehabilitation centres in every district and supporting Community –based rehabilitation activities.

Other war wounded

The commission recommended the provision of free primary, secondary and tertiary health care, including rehabilitation and physiotherapy services to eligible individuals depending on their level of injury or disability. This is extended to children under 18 who fit in the other war wounded category unless their level of injury requires lifetime treatment.

Additionally, for the victims who experience a 50% reduction in their earning capacity as a result of the injuries, the services of free physical health care is also to be provided to the wives and children under 18 years of age.

Victims of sexual violence

For both the adult and children victims of sexual violence, the commission recommended free primary, secondary and tertiary health care depending on the degree of their injury. The child victims are entitled to the medical care until the age of 18 years unless their injury necessitates the continuation of medical intervention.

This benefit is also extended to the direct beneficiaries, that is, children under the age of 18 and wives of male victims of sexual violence. It is however silent on the husbands of the female victims of sexual violence.

The commission further recommended more specific interventions for this group in two areas. The first is in the treatment of fistulas. This includes free fistula surgery, government assistance to organisations rendering services to the Princess Christian Maternity Hospital (PCMH) in Freetown where fistula surgery is performed, provisions for the employment and retention of qualified international surgeons, assistance towards the setting up of a fistula repair and training centre in Freetown. The second is in the Provision of HIV/AIDS and Sexually Transmitted Infection (STI) interventions. These include free HIV/AIDS and STI testing services, assist organisations that provide HIV/AIDS counselling training, increase the number of counsellors, free medical treatment for victims and their family members who test positive, assistance to medical facilities that provide such services, provide incentives to attract medical personnel specialised in HIV/AIDS and STI treatment and train national physicians.

Children

The commission recommended that in addition to the other medical services, the government assists organisations providing scar removal surgery and facilitate the provision of this service to the children who might require it, including inviting international surgeons and medical staff.

The proposals in health care included direct benefits to the victims, improvements to the health system and facilities to either create or improve accessibility to the proposed care and assist existing organisations and facilities already providing similar services in extending their services to the eligible victims.

6.3.3.2 Pensions

For all eligible adult amputees, victims of sexual violence and other war wounded who suffer 50% or more reduction in earning capacity, the commission recommended a monthly payment to be determined by the implementing body. The commission however recommended that it reflects the prevailing standard of living and amount of money already being paid to the ex-combatants. As such, the amount should not be lower than 60,000 Sierra Leonean Leones per month. The exact amount is to be linked to the earning capacity loss and be adjusted for inflation.

6.3.3.3 Education

As with the health care facilities, the education services suffered during the conflict through the destruction of schools and loss of personnel. Despite the services geared towards improving education by both government and international organisations and initiatives to assist children affected by the war, accessibility to education still remained a challenge.

The commission therefore recommended for free education until senior secondary school level to eligible children, assist and expand existing programmes facilitating the education of children who are victims, assist teacher training programmes, provide incentives to attract and retain teachers to remote areas and prioritise the education of all permanently disabled and sexual violence victims, both children and adults.

6.3.3.4 Skills training and Micro credit/micro-projects

The basis for the skills training was to enable the victims to become economically independent. The proposed recommendations included the following: Assist the organisations already providing such services to extend their services to the victims, conduct a market assessment to ensure that the skills provided are suitable for the needs of the market, include a small scale business management course in skills training and provision of micro-credits or micro-projects.

This programme was directed at all the categories of the most vulnerable victims however the commission provided that the amputees, other war wounded with 50% reduction in earning capacity and victims of sexual violence could choose one family member to participate in this programme if they were unable to.

6.3.3.5 Symbolic benefits

The basis for the symbolic reparations was to contextualise “individual reparations within a wider and social and political context” (TRC, Sierra Leone, vol. II, 2004, p.263) and ensure continued acknowledgement and remembrance of the harms. The following programmes were recommended as part of the symbolic reparations.

- i. Public apology from individuals, groups, bodies and organisations that bear responsibility for the atrocities committed as well as from the government on behalf of the actions or inactions from previous governments.

- ii. Memorials, including a national war museum and memorials in different parts of the country. These may comprise of monuments, renaming buildings or locations and transforming victims' sites into meaningful projects.
- iii. Commemoration ceremonies for the victims, identification of mass graves and reburials according to religious and cultural customs. It further recommended for the establishment of a National Reconciliation Day on January 18 where various commemoration activities can be organised.
- iv. Wide dissemination of the reparations programme, including translating it into different local languages.

6.3.3.6 Community reparations

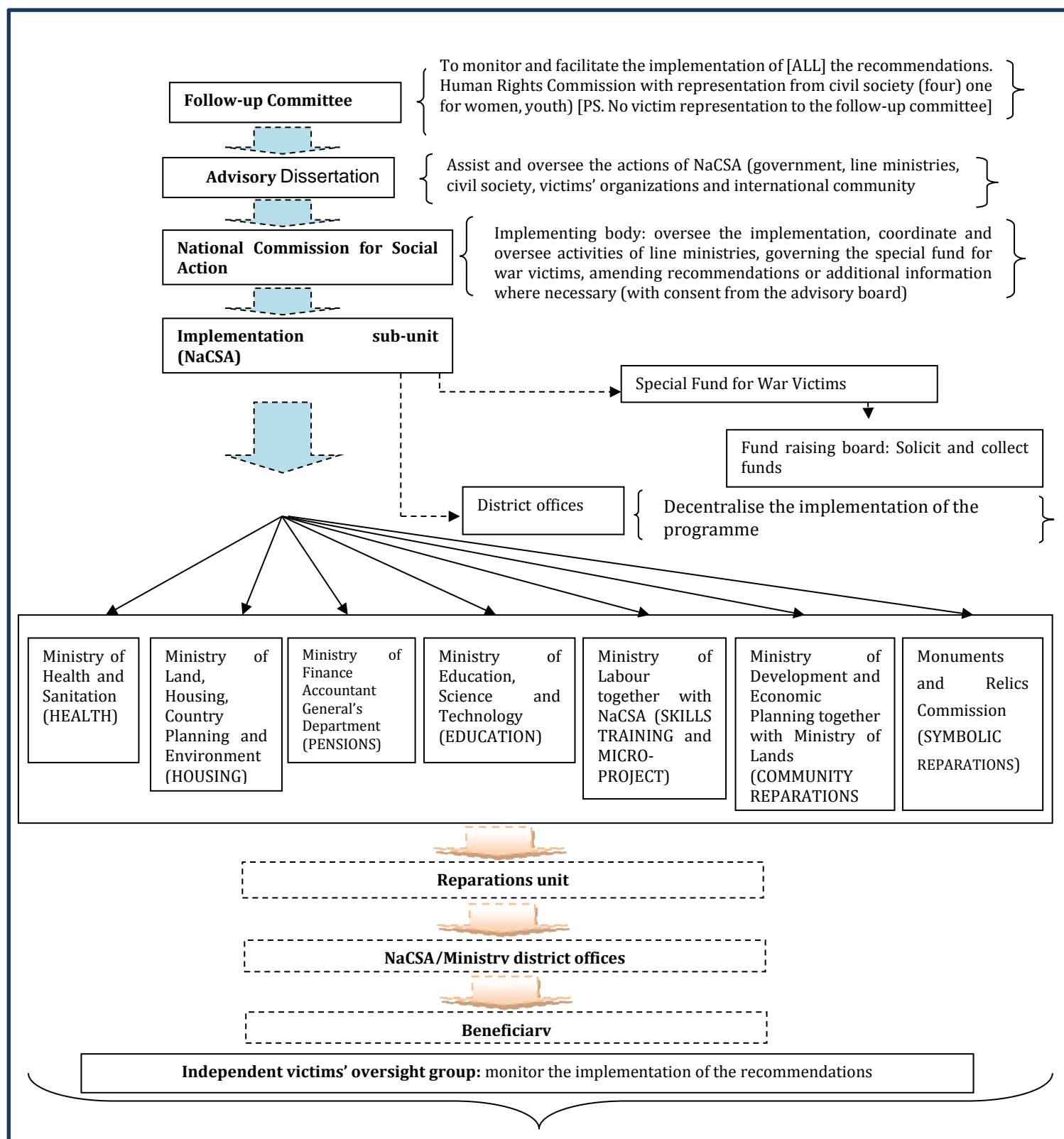
This would comprise of reconstruction and rehabilitation of regions that faced a significant level of destruction through capital and technical support. Although it does not pinpoint the specific regions targeted for reparations, it proposes a close collaboration between government and local and international organisations in identifying and assessing the level of destruction, reconstruction efforts and what still needs to be done.

In general, a key consideration to the recommendations on reparation was the commission's awareness of the country's socio-economic situation. It pointed out that several institutions had broken down and were lacking personnel hence the government was faced with the insurmountable task of reconstruction. The commission therefore did not wish to put the government in a position of choosing between availing reparations and rebuilding the country. Additionally, poverty and deprivations were generally widespread and access to basic social services was equally difficult not only for the most vulnerable victims but the rest of the general population as well. The proposed programme therefore aimed at complementing the existing programmes and services by incorporating a reparations component and facilitating accessibility to the group it considered the most vulnerable victims.

6.3.4 Framework for the Follow up and Implementation of Victims' reparation

As shown in figure 2, the commission recommended a detailed follow up and implementation framework. The system was decentralised to the district level.

Figure 2: Outline of the Structure of the Commission's Reparations Programme



Adapted from TRC, Sierra Leone, Vol II, 2004, pp. 266-268

The sole responsibility for the implementation of all the reparations was placed on the government which was expected to “faithfully and timeously implement the recommendations directed at state bodies and encourage or facilitate the implementation of any recommendations that may be directed to others” (TRC, Sierra Leone, vol. II, 2004, p.247).

The commission recommended the establishment of a follow-up committee required to closely and regularly monitor government performance towards the implementation of recommendations. The follow-up committee is responsible for keeping an eye on the whole range of recommendations and not only specific to reparations. The commission recommended that the Human Rights Commission should take up the role and further include four representatives from civil society groups.

Specific to reparation, the commission reiterates the argument that reparation is principally the responsibility of the government and it therefore directed the recommendations at the government, particularly in financing the reparation programme. This could be done in three ways: financing the measures described, continuing a service where an organisation or body does not have the capacity or mandate to maintain its activities, and seeking outside financial or donor support (TRC, Sierra Leone, vol. II, 2004, p. 250).

In terms of implementing the recommendations, the report proposed that reparation programs be coordinated and implemented by NaCSA (p.266). It also suggested that an advisory committee be formed to monitor the work of NaCSA comprising of members from the government, line ministries highlighted in the recommendation, civil society, victims’ organisation and the international community (p.267).

NaCSA is a body that was established by the government in the post war period to deal with issues relating to social reconstruction and rehabilitation, in the areas of education, community infrastructure, health, sensitisation, resettlement and agriculture. The commission argued that it was logical to task an already existing body working with war-affected communities with the implementation of reparation rather than creating an entirely new one (TRC, Sierra Leone, vol. II, 2004). The role of this body is “to oversee the implementation of the reparations programme ... coordinate and oversee the activities of the line ministries to ensure that all aspects of the reparation programme are implemented” (p. 267). In addition to this, NaCSA is

entrusted with governing the special fund for war victims and determining future decisions pertaining specific reparation requirements such as amount of monthly pensions, among others.

The commission further exercised flexibility in determining the role of the implementing body by entrusting the body to amend any of the recommendations, with the consent of the advisory board.

Readjusting NaCSA to accommodate reparation involved three aspects; creating a sub-unit within NaCSA to focus on reparations and govern the special fund for war victims, the reparation sub-unit creating an office in every district in order to decentralise implementation and creating an advisory committee comprising of members from the government, line ministries, civil society, victims' organisation and the international community to "assist and oversee the actions of the implementing body" (p.267).

From the recommendations, NaCSA is not tasked with carrying out the actual implementation but rather the agency is meant to oversee the implementation process of the different line ministries and to govern the special fund for war victims. Each line ministry therefore is tasked with ensuring the implementation of the recommendations that falls within its jurisdiction.

6.3.4.1 The Special Fund for War victims

As stipulated by the Lomé agreement, the commission also made specific recommendations regarding the special fund for war victims.

The commission suggested that a special fund for war victims be established within three months of the publication of the commission's report. It further called for the establishment of a fundraising board comprising of "respected Sierra Leoneans and friends of Sierra Leone" (p. 269) to solicit for funds. This group is to report to the advisory committee. NaCSA is required to make annual public reports on activities and financial status of the fund to parliament.

Below are the proposed sources of revenue for the special fund;

- i. The government through prioritisation of reparation in the budget, revenue generated from mineral resources and debt-relief-for-reparations-scheme.
- ii. Reparations or peace tax

- iii. Donor support
- iv. Seized assets
- v. Voluntary in-kind contribution from ex-combatants
- vi. Other legal sources

There is however no detailed information on how to ensure there is a meaningful and sustainable cash flow from the listed sources.

6.3.4.2 Implementation Time Frame

The implementing body was required to identify and register all the eligible victims taking into consideration victims who are difficult to access, input from local leaders and civil society organisations, privacy of sensitive groups such as victims of sexual violence and sensitisation activities to facilitate the registration.

The commission accordingly recommended specific time frames as below:

- i. The establishment of a subunit in NaCSA: within three months after submission of the report
- ii. The Special Fund for War Victims: Three months after the submission of the report
- iii. Most urgent reparations: Six months after the submission of the report
- iv. The implementation of the reparation programme within six years except those that need to be continued for the lifetime of the victim.

6.4 Government response to the recommendations

The first setback in the post-TRC was experienced on two fronts; the delayed publication of the final report and the release of the government White Paper in response to the recommendations addressed to it. The delay negatively affected the continuity of the TRC process because it was used as an excuse by both the government and CSOs not to move forward. The government stated that it could not issue a response without referring to the final copy while the CSOs were constrained in accessing the available versions but also hesitant to use them because they might not have been the final versions which might be altered after the final production of the report (The Sierra Leone Working Group on Truth and & Reconciliation, 2006; WITNESS, 2006).

WITNESS, an international human rights NGO that popularised a video format of the TRC findings and recommendations took on the mantle of advocating for the release of the government White Paper as part of its TRC follow-up project. According to its January 2006 final report, this was a full-fledged endeavour that included involving a number of local civil society organisations as well as international pressure, the most notable being bringing on board international film star and actress, Angelina Jolie who personally met with the president in Freetown and urged him to release a government response and work towards implementation of the recommendations (WITNESS, 2006).

6.4.1 The Government White Paper

Eight months after the submission of the TRC report to the president, the government released the White Paper on June 27 2005 containing its responses and strategies for implementing the recommendations. The White Paper in itself however left a lot to be desired. It contained a number of typography and content errors and has been criticised as not meeting the standard set by the report. WITNESS contends that “it does not appear to grasp the seriousness of the issues at hand [and] treats the TRC process with contempt” (p. 16) and further highlights cases where they point to the government’s dishonesty and disregard of the commission’s recommendations.

The White Paper contains responses to all of the recommendations made in the report. However, this part only focus on the recommendations on reparation.

The response on the recommendation on reparation is contained in only one paragraph. This is in contrast to the TRC report which devoted a whole chapter where they spelt out the rationale, beneficiaries and implementation framework. The White Paper does not make any reference to this detailed version but focuses on the summary found in the recommendation section.

Whereas the government in general acknowledges the reparation recommendations, it remained non-committal on a definitive implementation strategy. It states that it

“Accepts in principle the findings and recommendations therein contained. However the Government will use its best endeavours to ensure the full and timely implementation of various reparation programmes recommended by the commission, subject to the means available to the state, taking into consideration the resources available

to it and assistance received from the international community and the countries mentioned in the report” (Sierra Leone, 2005, p. 16).

The White Paper response is not clear on the general framework it will approach to ensure implementation and phrases its response in vague concepts such as “best endeavours”, “subject to means available”, “resources available”, “assistance from international community.” The vague approach to its commitment could be used to its advantage as there are no tangible work plans to which it can be held accountable.

This vagueness of interpretation is also reflective in the TRC definition of “faithfully and timeously” in the TRC Act which they interpret as government taking “all reasonable steps within its means” (TRC, Sierra Leone, Vol II, 2004, p. 118).’ This leaves it open to varied interpretations and as such can infer its inaction or delays as events beyond its means in a context where it is trying its best. In retrospect, the TRC report however does specify explicit time frames for the implementation.

The content and approach of the White Paper caused the government’s commitment to follow up and implement the recommendations to be questioned especially by the civil society. More so, because the White Paper lacked a tangible and specific strategy and timeline for the implementation (Sierra Leone TRC, n.d.; The Sierra Leone Working Group on Truth and Reconciliation, 2006).

In a letter to the president, the civil society in their response to the government White Paper, expressed their “concern” at the “unconventional manner” in which the paper was “composed and released” and state that it is “vague and non-committal” and in need of “substantial revision.” They refer to it as being “akin to a “green paper” which serves to instigate a period of public consultation *in advance* of a government policy proposal” (Paul, 2005).

Despite the civil society response, there was no revision or further response regarding the White Paper.

6.4.2 Follow up activities

Following the TRC, CSOs continued to play an active role in advocating for continuity of the commission’s output, particularly in setting up mechanisms to implement the recommendations. It particularly worked towards dissemination of the findings and

recommendations (Svård, 2010; The Sierra Leone Working Group on Truth and & Reconciliation, 2006).

In 2006, The Sierra Leone Working Group on Truth and Reconciliation (WG) conducted an assessment of the work of the truth commission and was quite critical about the delay in instituting follow up mechanisms and the sluggish response of both the government and the international community (The Sierra Leone Working Group on Truth and & Reconciliation, 2006). The WG study further expressed serious reservations about the follow up framework particularly, the role of the Human Rights Commission of Sierra Leone (HRCSL) which had not yet been established despite a 2004 legislation enabling it.

Specific to reparation, the study established that respondents felt that NaCSA would be compromised because it is a parastatal body and perceived it as corrupt. There was also exasperation expressed at the delay in establishing the special fund for war victims. The WG were of the view that the commission should have proposed an interim follow-up committee. It briefly mentions the civil society-led TRC Follow-Up Project that aimed at coordinating with the government to start on the implementation phase however there is no further information regarding the group.

A report by WITNESS however indicates that it spearheaded the TRC Follow-Up Project in May 2005 to advocate for the implementation of the recommendations of the TRC. This was a follow up to the previous “Witness to Truth” project in which they supported four local NGOs in disseminating the TRC report using the Witness to Truth Video. WITNESS partnered with a consortium of international and local NGOs for a coordinated follow up project.⁹ The WITNESS consultant however departed from Sierra Leone in December 2005 after eight months (WITNESS, 2006). Besides the 2006 report, I was unable to access any further documentation regarding the work of the follow up project.

⁹ These organisations included: Conflict Management and Development Associates (CMDA), Campaign for Good Governance (CGG), Centre for Co-ordination of Youth Activities (CCYA), Centre for Democracy and Human Rights (CDHR), Conciliation Resources (CR), Forum for African Women’s Educationalists (FAWE), Forum for Democratic Initiatives (FORDI), Sierra Leone Court Monitoring Programme (SLCMP); Women’s Forum; Legal Access through Women Yearning for Equality Rights and Social Justice (LAWYERS); Young Men’s Christian Association (YMCA). The Sierra Leone Association of Journalists (SLAJ) and the Bar Association. Internationally, WITNESS collaborated with Human Rights Watch, Fund for Global Human Rights and the former Head of Investigations at the TRC, Howard Varney.

In December 2006, the HRCSL was inaugurated (Human Rights Commission of Sierra Leone, 2011). However, in addition to its follow up responsibility as stipulated by the TRC recommendation, it was inundated with its other terms of reference concerned with human rights issues (Svård, 2010). Nonetheless, in 2007, the HRCSL, jointly organised a national consultation with The United Nations Integrated Office in Sierra Leone (UNIOSIL) and developed a matrix of the implementation of the truth commission recommendations. In the 2007 matrix, it indicated a stalled reparation programme. However a task force was established to advise the government on a reparation strategy. A proposal for funding was also presented to the UN Peace Building Fund.

A follow up consultation was organised in 2010 by the HRCSL and United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) where the 2007 matrix was reviewed and updated. According to the matrix, some progress was made in terms of emergency medical support such as fistula surgeries, aspects of the symbolic reparations, skills training for victims of sexual violence however the bulk of the reparation remained unimplemented. HRCSL and UNIPSIL report that they endeavoured to physically visit the different agencies and ministry for updates however they faced difficulty in obtaining the relevant information from the different ministries as well as attracting their participation (Sierra Leone TRC, n.d.).

According to the implementation matrix, significant efforts was made in the following areas: amending the NaCSA Act which mandated it as the implementer of the reparation programme; funding of USD three million from the UN Peace Building to kick-start the reparation programme and Launching the reparation programme and Victims Trust Fund in 2009.

In terms of actual activities, the NaCSA embarked on a beneficiaries' registration programme, micro-credit grant of USD 80¹⁰ to 21,000 beneficiaries, fistula and other surgery to 235 victims and 36 victims respectively and educational support. NaCSA further developed a five year strategic plan 2010-2014 amounting to USD 112 Million to roll out the rest of the reparation programme although it had not yet received any

¹⁰ The exact amount awarded was Le 300,000, although depending on the exchange rate, it is usually framed as USD 80 to USD 100.

commitment for funding either from the international donors or the government (Sierra Leone TRC, n.d.).

The above follow up projects contained in the implementation matrix were concerned with all the recommendations in general, although I only selected the reparation aspect for discussion above. The most detailed study focusing only on reparation was carried out by ICTJ (Suma & Correa, 2009) . The study assessed the operation of NaCSA one year after the UNPBF had been provided to kick start the reparation programme. The report reiterated and provided more detail on the specific activities carried out as highlighted in the matrix. It further recommended that the government embark on defining a long term reparation programme for all the measures recommended by the TRC. This report focused on reviewing the activities carried out by NaCSA in the one year period, which it does in a very detailed manner. However, it does not frame it within the broader reparation proposals in terms of comparing what the actual reparation plan was and what has been done.

Although the bulk of the advocacy towards implementing the recommendations was carried out by CSOs, several other CSOs, both local and international continued in their activities in the provision of basic social services and infrastructure development (Africa Region External Affairs Unit (AFREX), 2007). Government and international organisations also focused on general reconstruction and development efforts.

Despite the recommendations on reparation being framed around linking them to ongoing civil society and government programmes, the SLPP and subsequent APC government did not attempt to align its reconstruction efforts to the TRC recommendations (Svård, 2010). Neither did civil society despite providing similar services.

Conclusion

This chapter aimed to present the background to the establishment of the truth commission and an understanding of reparation within that context. It also discussed the post-TRC phase and the response of the government.

The TRC emerged as a component of the peace negotiations. It was a compromise between amnesty for the ex-combatants and doing nothing for the victims. The TRC

and reparation programme therefore appeared to be framed based on the benefits that the ex-combatants received and continued to receive.

The 1999 Lomé agreement under Article XXVI(1) called for the establishment of a truth and reconciliation commission to “address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” In 2000, the TRC Act was passed and it specified that the TRC would investigate on the causes, nature and extent of the violations and abuses; Report on the violations; and create a conducive climate to promote reconciliation by providing an opportunity for both victims and perpetrators to share their experiences and engage in constructive interchange.

The TRC began operations in 2002 and following intense and closely followed proceedings, it produced a report on its findings and recommendations in 2004. Among its recommendations was an extensive proposal on reparation for the war victims. The reparation recommendations focused on complementing or supplementing existing government and CSO programmes.

The report highlighted five categories of victims for the specific reparations. They were selected based on their level of vulnerability and included amputees, other war wounded, children, victims of sexual violence and war widows. The specific reparation programmes consisted of health care, pensions, education, skills training and micro-credit projects, symbolic benefits and community reparation. The proposals also included a detailed report consisting of its findings and recommendations, as well as a framework for the follow up and implementation of the recommendations.

Since the submission of the report there has been limited follow up and implementation efforts. Following funding from the UNPBF, registration of victims was carried out, as well as providing cash grants and aspects of the symbolic reparations.

In general, the post-TRC processes point towards an uncoordinated effort, heavily reliant on civil society and donor funding. More so, scholarly research on Sierra Leone has focused more on linking the TRC to issues such as reconciliation, democratisation, rule of law and victims perceptions towards the TRC and other mechanisms rather than on the specific details of the implementation thereby reinforcing the relevance of this study.

CHAPTER 7: SYNTHESISING THE TWO CASES

7.0 Introduction

As pointed out by Posner & Vermeule (2003) the processes that determine the selection of a particular TJ tool can have repercussions on the outcome of the selected mechanism. The dynamics concerning the inclusion or exclusion of the mechanisms can act as pointers into the attitudes of the different stakeholders in the post-TJ phase. Chapters five and six therefore sought to explore the circumstances under which truth commissions and their recommendations on reparation were framed in the selected cases. It presented the background that led to the selection of the truth commission mechanism and the inclusion of reparation in the recommendation. It unpacked the meaning of reparation from the perspective of the truth commission and how these are framed, including the follow up and implementation mechanisms. Finally, it analysed the government response to the recommendations by examining the government White Paper issued following the submission and publication of the truth commission report.

In chapter 3.4, the Third-way or an integrated approach to studying implementation of reparation following truth commission was proposed. It argues that truth commissions and the reparations should be viewed as being on a continuum whereby the processes that occur before the existence of the commission are equally critical to both the commission operation itself and the outcomes of the commission. The integrated approach proposes that in studying implementation, it is essential to go back to the beginning to question why and how an approach was adopted in order to make sense of why the outcome is heading in the direction it is.

In the preceding chapters, I present a comprehensive background of the cases of Ghana and Sierra Leone in their endeavours to address past human rights violations using the truth commission and reparation mechanism. The following discussion uses this background information to further develop the integrated framework through an analysis of the secondary literature to identify variables pertinent to studying implementation of the recommendations on reparations. It identifies five main levels of analysis: pre-truth commission, framing of reparations, content of the proposal on reparation, frameworks for follow-up and implementation, and post truth commission.

7.1 Pre-truth commission

At this level, a study of the implementation seeks to understand the circumstances that influenced the setting up of a commission and the inclusion of the reparations in the debate. It identifies three variables: the motivation, agency and mandate.

7.1.1 Motivation

This variable analyses the motivation for the selection of the truth commission mechanism. The reasons why a truth commission is established are as varied as the cases. Sometimes, truth commissions may appeal as an easy way out and a façade that the government is doing something about past human rights violations. In other cases, it may be an alternative to doing nothing while in others it is to complement other TJ mechanisms. In other cases, however, it may appear as the most pragmatic approach. Where the motivation is questionable, it rarely results in any tangible output because either the report is never released or the commission disbanded before the completion of its mandate. Higher levels of incentive for being set up conversely produce significantly higher outcomes.

In the background information of the cases, Sierra Leone and Ghana experienced different forms of motivation. The Sierra Leone truth commission was as a result of the 1999 peace negotiations and the prioritisation given to the ex-combatants through the ceasefire and DDR processes. The debate about a truth commission only became apparent in the 1999 Lomé agreement despite there being earlier peace negotiations.

In Ghana, the truth commission debate emerged almost a decade after the transition to a constitutional government. Following the Kwesi Pratt Jnr. case (1994) which was turned down by the CHRAJ, it proposed that the petitioner apply for the setting up of a commission of inquiry to investigate such cases of disappearances that occurred during the unconstitutional regimes (Appiagyei-Atua, 2000). It was during the 2000 elections that the space was availed for a discussion into the setting up of a commission through the inclusion of this point as an election manifesto.

The Sierra Leone case presents a late entry of truth commission in the peace negotiations that was primarily concerned with bringing the war to an end and ensuring that the combatants do not renew any fighting. Priority therefore was given to the programmes concerned with the ex-combatants over the truth commission

process. Ghana on the other hand emerged with a politically inspired commission with the new regime intent on fulfilling its election promise and politics continuing to remain relevant in its lifetime.

7.1.2 Agency

Secondly, the framework considers the agency or the actors responsible for pushing through the inclusion of the truth commission mechanism. It considers whether such an impetus was from specific individuals or groups and whether it was a grassroots civil society, local or international or a political decision. As seen in the Argentina and Chile case, local, grassroots driven processes tended towards tangible outcomes as opposed to internationally driven processes such as in El Salvador and Haiti.

The Sierra Leonean case tended towards a mixture of local and international civil society pressure for the inclusion of victims and mechanisms to address victims' needs. The presence of ICTJ and substantive funding in TJ issues further reinforced this direction (Africa Region External Affairs Unit (AFREX), 2007; The Sierra Leone Working Group on Truth and & Reconciliation, 2006). Civil society and victims representation in the 1999 peace negotiations was therefore instrumental in placing the issue of the commission on the agenda.

In Ghana, despite the political origins, civil society became influential in making the truth commission a reality. ICTJ also had a strong presence in Ghana and a number of organisations under the civil society coalition advocated for the establishment of the truth commission following the electoral victory of NPP in 2000.

In both of these cases, what was not obvious was the issue of reparations for victims during this advocacy. In the literature analysed, there was neither detailed information regarding the context of the truth commission advocacy nor the goals of civil society activism during this period.

7.1.3 Mandate

A truth commission derives its terms of reference from the mandate and it is important how it frames the issue of reparation.

In the Sierra Leone TRC Act, there is no direct mention of reparation per se, however, the Act uses phrases such as 'responding to needs,' 'restoring human dignity' and promoting reconciliation (article 6(1 and 2b)). It also calls on the commission to provide information regarding the special fund for war victims (article 7(6)). It is these references that the commission interpreted to mean reparation for victims.

The Ghana NRC Act was more direct on the issue of reparation. The commission was required to make appropriate recommendations to the president for redress of wrongs (section 3(1)(b), 4(c)). The commission therefore interpreted its mandate to make recommendations as a directive from the Act.

As will be discussed further on, the Sierra Leone commission emphasised linking the reparation programme to existing programmes while Ghana's programme focused more on recognising the individual harm by providing token measures.

Moreover, it could also be hypothesised that the mandate has an impact on how the government responds and it is therefore more responsive to implementation where the legislative instrument enforcing the commission had a direct reference to the issue of reparation as opposed to where it is simply implied.

7.2 Framing of reparations

At this level, a study of implementation seeks to understand how the truth commission interpreted the concept of reparations. It identifies two variables: interpretation of reparations and the existing conditions that determined the type of reparations proposed.

7.2.1 Interpretation of reparations

As discussed in 2.2.3, reparations can be defined either broadly or narrowly. A broad conceptualisation for instance, as outlined in the UN Basic Principles and Guidelines, while being ideal and comprehensive may be overwhelming to implement. A narrow interpretation could however exclude certain victims or harms. The interpretation is also significant in understanding the response of the implementing government. Apologies for instance appear to directly infer responsibility which may result in reluctance to implement. Likewise, already existing programmes could overshadow a reparations programme framed as social service benefits.

Sierra Leone interpreted its reparation programme on two levels. The first level would generally benefit all Sierra Leoneans. These were benefits to be enjoyed from the whole TRC process including the recommendations on institutional reforms and reconciliation. These were meant to address the structural and historical violations and change the structures that perpetuated the violations. The second level was the specific reparation programmes which were narrow and targeted at specific beneficiaries identified as the most vulnerable.

The commission in its report however does not show a direct link between a specific harm and specific reparation but rather reparation is based on the level of vulnerability resulting from the harm. For instance an amputee was considered more vulnerable than an individual who lost their property and the amputee was therefore entitled to the reparation benefits. As discussed in 6.3.3 reparation was framed in terms of access to services intended to improve the lives of the most vulnerable victims. This appeared to be a pragmatic approach by the commission considering the large number of victims. The commission argued that all individuals, both Sierra Leonean and non-Sierra Leonean were considered victims of the conflict. Following this logic, they could not therefore award specific reparations for everyone. This approach of defining victimhood by vulnerability however had its shortcomings in terms of individual perception of victimhood. As discussed in 9.1.2 some of the individuals who considered themselves eligible for reparations were excluded.

For Ghana, the reparations were defined more narrowly and framed as awards to acknowledge and recognise victimhood. Specific harms were identified and evaluated using a monetised scale and awarded according to the harm, although not necessarily according to the scale of harm.

It was therefore a more direct process of linking specific violations to specific benefits. The victims identified themselves and stated their harms. The commission thereby proposed the amount to be paid as compensation for the specific violation. For instance, for human rights violations resulting in the loss of life, the beneficiaries could be awarded between 20,000,000 – 30,000,000 Ghanaian Cedi while an individual detained for between six months and two years could be awarded 5,000,000 Ghanaian

Cedi.¹¹ The proposed amounts can be found in the report (National Reconciliation Commission, 2004, pp. 175–176).

In both cases, the benefits did not appear to be proportionate to the harms thus, a strong emphasis was placed on framing the benefits as tokens of acknowledgment and recognition of harm, rather than as direct payment to match the harm. The selection of the beneficiaries for specific reparations was in both cases determined by the respective truth commissions and in this way, they have attempted to demonstrate that this process and the benefits was based on actual victims' needs.

7.2.2 Context

This variable looks into the aspects that inspired how the commission framed the reparations. It considers the existing socio-economic, political and cultural conditions that influenced the eventual forms of reparations recommended by the commission.

In Sierra Leone, the commission was aware of the widespread poverty and destruction of infrastructure and institutions. They were keen on reparations not putting a strain on government or organisations providing similar services. They therefore focused on complementarity of the benefits and linking them to existing programmes. It also tried to respond to the victims' needs as closely as possible by posing questions directly about what the victims needed. Additionally, due to the overwhelming levels of victimisation, it strove to narrow down the victims to benefit from the specific reparation programme so that the programme does not overwhelm the government.

Meanwhile, Ghana approached reparation by considering it as a token payment for individual harm. It therefore emphasised the intrinsic value or meaning behind the programme, which was acknowledgement and recognition of victimhood, rather than a payback programme. It also emphasised that the NRC Act called on it to make recommendations according to the victims needs but stressed that it would be impossible to equate the reparations to the respective needs which re-emphasises reparation as a token.

¹¹ Following the devaluation of the Ghanaian Cedi in 2007 this amount changed to 2000 – 3000 Ghanaian Cedis, approximately, \$ 454 - \$ 680 at the current exchange rate.

7.3 Content of the proposal on reparation

This is an area in which significant discussion has already taken place (3.2.2). From these discussions, it is implied that the design aspects of reparation programmes are critical to the implementation. A number of characteristics have been identified which are purported to maximise the chances of implementation being carried out. de Greiff's taxonomy in this case provides a comprehensive set of variables against which the content of the reparations proposal could be tested (de Greiff, 2006a, pp. 5–13).

The discussion on features that impact a reparation programme was however more sporadic and less generalised. However in 3.3, five features were identified from a cross section of discussions. These include considerations on resources, socio-political dynamics, legislations, the reparation context and the regime in power.

Both the Ghana and Sierra Leone recommendations appear to be comprehensive in that they consider the features identified in both the taxonomy as well as take into account several of the issues that the different studies identified as being pertinent to implementation.

7.4 Frameworks for follow-up and implementation

This level examines whether the commission proposed any frameworks for following up and implementing the recommendations and how detailed such a framework is. This includes two aspects: the proposed structure and funding base.

7.4.1 The structure

This variable analyses the structures proposed by the commission, if available to carry out the implementation.

The Sierra Leone case identifies a detailed structure to follow up and carry out the implementation of the reparation programme (figure 2). Ghana on the other hand does not specify any particular framework.

In both cases, the role of the truth commission and commissioners ceases following the submission of the report and there is no option of continuation. Ghana's recommendation is particularly stricter on the issue of reparation. It specifies that only

those who testified and are identified as victims are eligible for the reparation benefits and there is no option for new cases. Sierra Leone on the other hand does leave a loophole for the victims who might decide to come forward after the end of the commission.

7.4.2 Funding base

In framing reparations, commissions are often conscious of the funds necessary to carry out the specific programmes and may additionally propose funding sources.

Both Sierra Leone and Ghana highlighted a number of avenues that could be used to finance the reparation programme. In both cases however, these are vague suggestions without any enforceability mechanism. There is an emphasis on the voluntariness and an implied sense of government and donors' willingness to fund the programmes, an assumption which might not necessarily hold.

7.5 Post-truth commission.

At this level, the study considers the responses of the different stakeholders following the submission of the report and the end of the commission. It identifies two variables: Responses of the actors and the output.

7.5.1 Responses of the actors

Through an analysis of the different actors, a study of implementation can determine the relevance of the issue of reparations in the post-truth commission agenda and conversely whether it is a priority or not.

In Sierra Leone, the first set back to implementation was the delay in releasing the public report which to an extent slowed down the momentum of the different actors. It likewise impacted on the dissemination efforts. Furthermore, whereas the post-truth commission discourse was framed around the implementation of the truth commission's recommendations, it did not specifically focus on reparations but rather the entire body of recommendations. Civil society remained vibrant in the advocacy for implementation, however, it focused mainly on the "imperative recommendations" which did not include reparations. Reparations was categorised under the "work towards" recommendations (TRC, Sierra Leone, vol. II, 2004, pp. 199-120-225).

Furthermore, the victims' organisations registered a minimal presence and therefore were not influential enough to put reparations on the agenda.

In general, the government and other external response was tepid and noncommittal to the issue of reparation considering its response in the White Paper.

The delay in setting up specific bodies highlighted by the commission to follow up with the recommendation was also another setback. The commission did not fully consider the legislative implications of the frameworks such as the establishment of the HRCSL which required a legislative decision. This took at least two years after submission of the report before it was passed. Similarly, the alterations to NaCSA, the implementing body also required legislative approval.

In Ghana, although there were limited copies of the report released by the government, its response in the White Paper was more positive. It agreed with the findings and proposals for recommendations of the commission and committed itself towards implementation of the said recommendations. The civil society organisations also remained involved immediately in the post-truth commission phase, continuing to advocate for the implementation of the recommendations.

7.5.2 Output

This variable considers the documented output in terms of implementation and whether this is reflective of what is in the proposal.

In both cases, there is limited documentation regarding the implementation process. In Sierra Leone, through mainly civil society reports, the analysis shows that the reparation programme is different from the proposed programme while a number of the reparations are still on hold.

In Ghana, this information could mainly be accessed from media reports and they indicate one form of reparations has been carried out, the monetary compensations, and there is no information about the other types of reparation that were recommended.

This initial framework or model for studying the implementation of truth commission recommendations on reparations focuses on the available literature regarding the

commission, including the report and other documents. Whereas it is insightful, particularly on the factors that necessitated the commission or the issues surrounding how the reparation was framed, it is restrictive in other areas such as the interpretation of the different stakeholders, particularly information on the beneficiaries' attitudes and other perspectives towards the whole process and on what happened. In Ghana, a victims' survey was carried out immediately following the TRC but this was limited to gauging their attitudes about the process and there has been none regarding implementation.

In both cases, there is also no information on the step-by-step processes following the submission of the report as well as on the follow up mechanisms and processes. What is available is largely from the media and civil society reports with little analysis of how or why different actions were taken and their implications. Such limitations thus provide the impetus for an empirical study into the follow up and implementation processes.

Conclusion

This chapter aimed at synthesising the background to the two cases by applying the proposed integrated approach to studying implementation of the truth commission recommendations on reparation. It identifies five main themes and a number of variables under each as indicated below:

- i. Pre-truth commission
 - a. Motivation for selecting the truth commission mechanism
 - b. Agency or responsibility for getting the reparation issue on the agenda
 - c. The TC mandates and how they frame reparations
- ii. Framing of reparations
 - a. Prevailing circumstances that influenced the framing of the reparation proposal
 - b. Interpretation of reparation by the commission
- iii. Content of the reparation proposal and whether they meet the recommendations proposed by different studies on how to design a reparation programme.
- iv. Frameworks for following up and implementation
 - a. Proposed structures by the commission to aid in follow-up and implementation
 - b. Proposed funding sources for the reparation programmes

- v. Post truth commission
 - a. Responses of the different stakeholders
 - b. Output with a focus on what has happened and it is what was expected to happen.

The integrated approach views reparation as a continuum linked to the design and work of the truth commission. Limiting a study to only the post-truth commission processes provides an incomplete interpretation to studying implementation. Similarly, focusing on the secondary literature results in a number of limitations, particularly in the information that can be obtained such as the interpretation of the different stakeholders about the whole process and outcomes as well as the detailed analysis of what took place, why and how.

The subsequent section therefore presents the empirical findings from the cases, Ghana and Sierra Leone following field visits in each country.

PART IV. RESULTS OF THE EMPIRICAL STUDY

*This hand is cut off but nothing in the brain is cut off.
I expect to do something for myself ...
We don't believe that government does not have money.
Government take up the responsibility of the soldiers,
of the police but suddenly no money for the victims?
This hand is finished but the life is not finished."
(Amputee, Freetown)*

CHAPTER 8. GHANA: “IT’S NOT PERFECT, BUT IT IS BETTER THAN NONE.”

8.0 Introduction

The first person I secured an interview with was a member of the Reparation Committee. He also happened to have survived being killed in 1982. This was a state orchestrated killing of three high court judges. In his story, he had been asked to report for an assignment in Nairobi and it was during his absence that the killings occurred. Such state organised violations and abuses characterised the history of Ghana. He describes the situation as “anarchy” where violence from state sanctioned security groups permeated all aspects of society. The perpetrators of such crimes were rarely brought to justice and after the transition to constitutional rule, the 1992 constitution provided safeguards which protected the perpetrators but also made it difficult for individuals to pursue such matters. The NRC therefore emerged as an opportune mechanism for dealing with the legacy of violations and impunity and promoting national reconciliation. The perceptions towards the process and its outcome however are mixed.

This chapter presents the results of the empirical study on the implementation of the recommendations on reparation following the NRC. This was carried out in Accra, Ghana from 30 January – 25 February 2011 and 1 September – 21 October 2012. A total of sixteen open ended formal interviews were carried out. The respondents included the academia, former TRC staff, Reparations Committee, Civil society and victims. The main challenge to the field work in Ghana was the limited pool of respondents as the emphasis was obtaining expert views on the NRC and post-NRC process. It structures the discussion under five main themes (1) Operations of the commission (2) Commission’s recommendations on reparations (3) Follow-up of recommendations on reparations (4) Implementation of recommendations on reparations, and (5) salient issues arising from the interviews and my observations. Where direct quotes have been applied, they have been used verbatim.

8.1 Operation of the Commission

Under this theme, I sought to understand the context for the establishment of the truth commission in Ghana. In comparison to other countries in Africa, Ghana has generally been considered stable and with functioning institutions. It therefore comes as a

surprise to many that they established a TJ mechanism. The commission itself was a domestic initiative and has not been privileged with extensive research. This section is therefore concerned with establishing whether the commission was considered a necessary endeavour, why it was necessary and the role of civil society in propelling the cause.

8.1.1 Necessity of a truth commission

From the interviews, there was a general consensus that Ghana had experienced a tumultuous past and was therefore in need of a tool to bring about healing and reconciliation. It was however apparent that there was a divide between proponents for the truth commission and those who felt that it had been misused as a political tool and therefore had lost its authenticity in achieving its goals.

The proponents argued that Ghana's case showed that issues of transitional justice are not only limited to post-conflict situations but also include transitions from authoritarian regimes to democratic processes. It is in the latter context that Ghana's experience became relevant.

The militarisation of the country, coups and counter-coups and institutionalisation of violence created what one of the respondents described as "*pure anarchy*." Violence had become normalised up to the local levels where state operatives could be misused to settle personal scores. An example given by one of the respondents was as such,

"If I had a quarrel with you, I would just go and tell the police you owe me ten thousand. Then the police would come, 'give her her ten thousand.' If I don't, I would be shot or beaten to death. That's anarchy!" (Reparations Committee member)

There was consensus from the respondents that a lot of atrocious acts were committed against the people in the past. This was manifested through fear and suspicion that ostracised individuals and groups as well as severed the trust between the state and the people.

They further argued that despite the change to a constitutional government in 1992, the individuals who perpetrated the atrocities remained in power. It was considered a superficial transformation and did not attempt to address the previous injustices. Similarly, the previous governments did not address those wrongs. Reconciliation, at

the individual, local and national level was therefore considered necessary to heal the divide.

The issue of national reconciliation and redress for past harms became more galvanised during the 2000 national elections. The National Patriotic Party (NPP) promised that a national reconciliation committee would be established to address past harms because the nation needed to appreciate that certain wrongs had been done and it was time for healing. The advocates for a truth commission considered it important that the past harms and victims needed recognition and acknowledgement in order to bridge the divide that had engulfed the country.

However, the political undertones with which the truth commission had been introduced was picked on by certain sections of people who viewed it as a political tool to further political goals. Those advocating for it were however quick to point out that much as it had a political aspect to it, it was still relevant for the Ghanaian society to address the past human rights violations.

One of the respondents who argued against the truth commission pointed out that much as it was necessary to address past human violations, the truth commission approach for Ghana was not an appropriate tool because it was being manipulated for mainly political gain. He stated that whereas *“some people were genuinely inspired by examples in Latin America and also South Africa ... [however] there’re others who saw the propaganda value or political propaganda value in getting victims to tell their stories”* (CSO). According to him, such individuals were in charge of the commission and were therefore using it to push their political agenda and *“discredit their opponents”* through the stories that would emerge. On further discussion, it became apparent that besides his disagreement with the political undertones of the commission, he felt that the NRC was not comprehensive enough particularly in its method of recommending compensation for only a specific group of individuals.

“The period between 1982 – 1992, is a period where ethnic tensions were exacerbated, now you don’t throw money at ethnic tensions, you engineer programmes to bring people together and [so] people [get a] better understanding of their situation and that was not done which says to me that everything was so superficial.” (CSO)

A more useful approach according to the respondent would for instance include a more independent body, unencumbered by political intrigues which would have served a

better purpose, such as a parliamentary committee or any other constitutional bodies or even a body more *“familiar to the cultural set up and context.”*

This polarised view on whether or not the commission was necessary was also expressed by individuals with whom I had informal discussions. The main concern raised was the political tensions arising from the commission.

Despite the different opinions expressed, my perception is that the divisions originated from how the commission was utilised rather than whether it was necessary or not. The arguments of those who challenge it mainly revolve around how it was misused for political purposes thereby escalating divisions rather than the intended reconciliation. The proponents do not necessarily disagree with the political intonations but emphasise on the healing it brought to some victims through the acknowledgement and recognition of the harms.

8.1.2 The TRC as the lone choice

A point of agreement for both the proponents and challengers of the commission was that there were not many options for addressing past human rights violations and providing redress for the victims. Following the return to constitutional rule, the indemnity clauses protecting members of the previous regime effectively closed off the judicial route in the pursuit for accountability as explained below.

“The constitution had made provisions for indemnity for those people who were perceived to have committed those human rights violations which meant taking the judicial path was going to be difficult because of the indemnity [clause which] says nobody should be tried for any of those things which took place then. So it was also important for this reason that also if we could not go the judicial way, then the next option would be a TRC.” (University professor)

The TRC was therefore perceived as an alternative method of providing recognition and acknowledgement for the victims and establishing an official narrative. It was also viewed, as seen in the next explanation, an accountability tool that could be used for naming and shaming those people who had perpetrated the atrocities.

“[The TRC was a means] at least for us to document what happened and if you cannot try somebody, calling the person to the TRC was really [a] sign for sort of punishment, that sort of thing, so that was an important

part but maybe the judiciary could have gone ahead and tried some of those cases but there was the immunity.” (University professor)

From the explanations from the respondents, some cases had made it to the courts but these were far in between. The courts were also mostly accessible to few people who could afford it and follow up the cases, sometimes for years. Given the limitations of the different mechanisms which would have supposedly been used, the NRC therefore emerged as an accessible and extensive attempt for righting the historical wrongs.

8.1.3 Civil Society participation

The civil society organisations proved to be instrumental in setting up the commission. They played an advocacy role in calling for a solution to addressing the atrocities the victims had suffered in the past through the establishment of a truth commission, particularly since all other avenues for redress had been difficult.

During the set-up of the commission, CDD and the coalition of civil society organisations closely followed the drafting of the NRC Act. The coalition was composed of *“civil society organisations that were mainly interested in this reconciliation issue.”* (CSO). They contributed to the discussions surrounding the Act and made proposals to the government regarding the Act before it was passed into law.

The coalition was also active in awareness drives among the community. This involved sensitization campaigns about the truth and reconciliation mechanism and process so as to encourage people to not only accept the process but also to open up and participate in the proceedings

During the hearings, they mobilised support for the NRC as well as victims for the hearings. According to one of the members of the coalition, they sent people around the country to find out those who had suffered injustice and facilitated the process of bringing them to appear before the commission to tell their stories for instance by organising transportation services.

Throughout the proceedings, CDD and the coalition were instrumental in dialoguing with the commission. They identified best practices and published research and policy briefs to guide the commission on their drafting of recommendations, particularly on the reparation programme.

Following the NRC, the CDD launched a study to gauge victims' perception of the process. This study focused on victims who made statements and appeared before the commission and those who submitted statements but did not appear before the commission. According to a member of CDD, they were interested in finding out what the victims thought of the whole process and also in terms of the implementation of the recommendations. This has been the only cross country post-NRC survey on victims' perception that has so far been carried out. But this only goes to show how divorced from public discourse the post-NRC environment turned out.

The CDD and the coalition involvement however waned after the release of the report and at the time of the field work, I did not come across any civil society group whose work revolved around the post-NRC recommendations. There was the exception of the National Peace Council (NPC) whose area of focus revolved round promoting peace and national reconciliation. However after a brief discussion with the administrator, I verified that the NPC is a recent governmental institution set up to promote reconciliation. Its mandate is not in any way related to the NRC process and neither have they sought to coordinate their work with the recommendations made by the commission. They have also not looked into the matter of reparations for victims.

Some of the respondents however were of the view that civil society groups were not free of partisan tendencies. Considering the history of Ghana which was characterised by strong state control, the respondents were still sceptic about the impartiality of the civil society groups and they were thought to be acting in the interest of the political groups.

"After authoritarian regimes and after conflicts it's very difficult to have any non-partisan groups ... NGOs and so on will still have their own leanings It's difficult after situations in which we need transitional justice to find people who have not been affected in one way or the other by the situations leading to it." (University professor)

One of the more significant features of civil society activism in the truth commission process was the change in the level of involvement. Prior to and during the NRC, the organisations were exceptionally vibrant in getting the matter on to the agenda and keeping it there.

"CDD Ghana led the process ... over two dozen civil society organisations came together, formed a coalition and strongly, strongly, strongly

supported [the NRC]. We met with them regularly, they gave us their criticisms, their recommendations in helping us to chart our way around ... they went to the field and did public education, the outreach and when we closed the doors to statement taking they went out there, taking statements. They found the money you know, to go and do statement taking and bring us feedbacks some of it we actually had and all of it we investigated and immediately after our work, they pushed and pushed and pushed until government came out with a white paper which was overly delayed." (Former NRC staff)

However once the NRC process was completed and the government White Paper released, CDD and the coalition did not remain as involved in the post-NRC. Specific to reparations, the recommendations on reparations were not taken up as an issue by any organisation and as of 2012, one CSO member confirmed that it was not the main agenda of any civil society organisation.

I could not find a conclusive reason for this stance however a number of respondents alluded to the fact that CSOs mainly rely on external funds and expertise. The ICTJ had been instrumental in the truth commission process and collaborated with NGOs and the Ministry of Justice. At the time of the field visit, they were no longer involved and a number of the consultants who had worked on the project were either not in the country or had shifted their interest to other issues. The CDD, a close collaborator with ICTJ during the NRC process had also changed their area of focus to what they described as more developmental and democratisation issues. The link between funding and priority areas is based on my own assumption since the respondents did not directly admit that the change of focus was due to funding interest of the donors. They simply pointed out that other areas become more prioritised.

8.2 Recommendations on reparation

The basis for this set of questions was to understand the motivation behind the way the reparation was framed. The first motivation was from the views expressed by the victims. As explained by a former staff of the NRC, a number of victims who testified before the commission did not prioritise a material payment for their testimonies but were rather focused on the process of participation and getting their story told. This was attributed to the pre-NRC outreaches that focused on the non-monetary benefits from participating in the commission proceedings.

"We did not build up peoples' expectations on reparations. From day one I was careful to make sure that our people went out there, including civil society, to educate that reparations may even be only symbolic and that reparations where it is monetary may be only a token and we expressed so much so that the concept of token, that it is just a token became sort of popularised so we didn't raise huge or high expectations." (Former NRC staff)

The respondent also mentioned that despite the outreach programmes, some of the victims still explicitly stated that they expected some form of material compensation for their losses.

Irrespective of the expectation, the commission took the view of making recommendations for reparations for all the individuals who participated in the proceedings whether they expected to receive benefits or not.

"For us it was best to rather make recommendations for all; Those who said they did not want recommendations (sic), forget about them [the reparations], those who were silent on reparations and those who were explicit on reparations ... it is up to the person to say, 'I take it' or 'I leave it.'" (Former NRC staff)

The respondent further elaborated that the idea behind recommending reparations was drawn from the general human rights principle of remedying wrongs but also the moral viewpoint on redress for harms. As such reparations was considered a moral and philosophical obligation. More important however was that the NRC Act 2000 called on the commission to make such recommendations for reparation.

The commission sought to propose a realistic reparation programme that would not overwhelm the government and at the same time be able to convey acknowledgment and recognition of the violations. The former NRC staff and members of civil society I interviewed reiterated the views already expressed in the TRC report about how appropriate the content of the reparation was, considering the socio-economic and political atmosphere in Ghana.

8.3 Follow-up of recommendations on reparations

For the Ghana case, this is one aspect with limited literature could be found. Besides media reports, a detailed analysis of what happened after the submission of the report remained unexplored and neither were reports from the Reparation Committee available. On requesting for such a report, I was given a five page undated briefing summarising what had already been done. This section therefore focuses on clarifying what happened after the completion and submission of the report.

8.3.1 Frameworks for following up the recommendations on reparation

The NRC report did not make any reference to structures or frameworks for the implementation of its recommendations but rather directed them at the government to determine the way forward. According to one of the former commissioners, the justification for this was based on the mandate of the NRC which only called on the commission to make recommendations to the president for redress of wrongs.

“If TRCs are created and given a mandate of making recommendations, then the TRCs that are created as a result of the legal framework cannot but make the recommendations.” (Former commissioner)

As far as the members of the commission were concerned, they had fulfilled their mandate by producing a report which explained the historical antecedents of the injustices, identified the victims and categories of harms that had been committed and made the appropriate recommendations to the government to facilitate national reconciliation and award reparation to the victims.

Some of the respondents however questioned such a structure in which all the recommendations are left to the government and the commissioners and members of the commission become uninvolved in the post truth commission period. They were of the view that the mandate of the commission should have been broad enough to allow the commission to oversee the implementation as well. One of the respondents in particular pointed out that this framework creates a gap for inaction.

“The fact this thing [the TRC] winds up soon after they have given their report. Who is even there to remind the government that it’s supposed to do this? So even if it’s not the TRC, if there could be yet another body to be in charge of the monitoring, something can be done. Otherwise the government will decide that it has forgotten all about that, there will be

nobody specifically to remind them and that sort of thing.” (University professor)

The slow pace and lack of activity in terms of follow up and implementation was also attributed to the absence of an institution specifically for monitoring the progress of the recommendations.

“There is nobody to see to the implementation, an outside body ... to see to the implementation, and the issue of funds will always be used as an excuse. And you know countries like that are always also with financial distress so using non availability of funds as an excuse can always be there and the international community too doesn’t come in to help.”
(University professor)

He further added that:

“[There was] no public awareness. They [the victims] went there, they went [and] said all that they would say and this thing was published and that was the end. Perhaps it goes up to the fact that if we should have some institution to deal with the post commission period. To educate, maybe it could have been taken on by the National Commission on Civic Education as part of it, but nobody was given that job specifically so it just faded into disuse ... Nothing was done to say even educate the people about what came out of the report. Nothing. No institutions. So maybe this idea of having some sort of body to be responsible for monitoring and even disseminating this information and so on.” (University professor)

The respondent might have been partly justified in pointing out this lack of follow up, especially considering that there were limited publicly available reports of the commission. However, civil society was quite involved during the NRC and immediately following the release of the report, as discussed in 8.3.3, particularly in popularising the findings and advocating for a follow up regarding implementation.

Some of the respondents also argued that the government did not articulate a clear outline for the implementation of the reparation recommendations with one respondent arguing that there was no formal document produced by government regarding its implementation plan.

“Why do you say Ghana reparations policy? I think you are articulating a view about something that doesn’t exist. There were recommendations

for reparations, and maybe I am being technical about policy ... but I don't think government sat down, whether as the let's say the Attorney General's department or Cabinet or anywhere anybody sat down and said, 'hmm this report of the NRC, they've made a lot of recommendations for XYZ' and 'let's take the reparations part, what can we do about it?' If there was a policy, it was contained in the white paper." (Former NRC staff)

As already highlighted in 5.4.1, the White Paper contained a brief paragraph on reparations affirming government agreement to the content and urgency in implementation.

Although some of the respondents expressed their opinion that there were no concerted awareness drives following the NRC, all of the respondents in both the formal and informal discussions mentioned regularly following or at least being aware of the proceedings during and after the NRC that were run in the media. This was because the proceedings were broadcast through the Ghana Broadcasting Corporation TV and in the words of a respondent, *"there were so many radio discussions, many media discussions on the report and on the conclusions and then the findings, just to let people know about it."* (CSO)

Two main issues regarding the media and NRC stand out. First, the government not appear to take particular control and advantage of the media attention to roll out a more concerted awareness campaign. CSOs therefore dominated this media platform and in most cases had particular areas of interest in the report. The respondents I spoke to confirmed that most of the sensitization about the TRC came from the CSOs. However, as pointed out by one CSO member, much as they were advocating about the NRC, CSOs are mostly *"interested in specific issues in the report and they were doing that [raising awareness on issues that served their interests]."* (CSO)

Secondly, many of the respondents felt that the debates and programmes in the media about the NRC was tainted by political views. *"I wasn't much enthused about the media aspect because once again, it was skewed politically. People were looking at it [NRC] with political lens."* (CSO)

From the discussions, the respondents felt that government did not take an active role in popularising the NRC. Both the pro and anti-NRC respondents shared the view that government could have used this opportunity to express their impartiality.

8.3.2 What happened after the completion of the NRC report

Once the NRC had completed its work, it was required by the Act to submit a copy of the report to the president. In October 2004, two months before the general presidential election, it submitted its report. One of the former commissioners described this as a *“tense and victorious moment”* as there was a lot of criticism and opportunistic individuals waiting to capitalise on this aspect of not being able to submit the report as a failure of the NRC.

The president in principle accepted the report with a promise to have it reviewed and a White Paper released. However there was uncertainty about the future of the report due to the on-going presidential elections. This waiting period was described by one of the respondents as a *“nail-biting period”*. The future of the NRC report was literally being determined by the outcome of an election between the NPP and the NDC. The NDC had already expressed its dissatisfaction with the process including boycotting the parliamentary proceedings during the drafting of the NRC bill as well as the hearings. It was therefore unlikely that they would follow it up if they won the election.

Despite the tension and the probable political gain from the process, it was pointed out by several of the respondents that the then ruling party (NPP) opted not to use it as a campaign tool. In fact the whole NRC issue was put on hold during the election period, at least by the NPP.

It would be prudent to however acknowledge that despite this public stance of not wanting to gain political capital out of the NRC process, indirectly, the ruling party had already scored from this endeavour by availing the opportunity to set up such a mechanisms and in the commission having carried out its work.

Moreover, some of the respondents pointed out that prior to the elections, sections of the report were leaked and published by pro-government newspapers although it was not verified whether it was leaked by the government or opposition. The assumption from the general population at that time however was that the leakage was meant to discredit the former president Rawlings and the NDC. The information about the leaked

report was inconclusive as none of the respondents could confirm the assertion. The respondents however stated that the stories about the leak did damage the image of the NRC and reinforce the idea that it was being used as a political tool more interested in witch hunting the former NDC regime rather than facilitating national reconciliation.

The pro-NRC respondents however still maintained that despite the leak, the ruling party should be commended for not trying to gain political capital out of the report. It was seen as a positive sign of the government's commitment to the victims and putting the victims' interest over politics. It was even interpreted as a sign that government was serious about the findings and its commitment to implement the recommendations.

The optimism in the government willing to foster reconciliation was further renewed when six months after the NPP had won the elections, they issued a White Paper on the report accepting the findings and recommendations of the commission's work. In it, they made a commitment to among others, set up a committee to implement the recommendations and findings.

According to one of the members of the Reparations Committee, doubts about the commitment of the government began to creep in when it took almost one year before the implementation committee was set up. In 2006, two years after the submission of the NRC report, the Reparations Committee was created.

From the discussion with the Reparations Committee, I understood that the responsibility for working out the modalities for the implementation of the recommendations was given to the Ministry of Justice which was further delegated to the Attorney General's office. Specific to the recommendations on reparation, a three member committee was set up within the Attorney General's office to manage the implementation. What was most striking was that the issue of reparation took centre stage and when talking about implementation of the NRC recommendations, it is often associated with reparation. To corroborate this, when I went to the Ministry of Justice to discuss the progress with regards to the implementation of the NRC recommendations, I was immediately directed to address all my concerns to the Attorney General's office and from the Attorney General's Office, I was referred to Justice V.C.R.A.C Crabbe, one of the members of the Reparation committee who was actively managing the office.

In terms of the actual set up of the committee, there was minimal bureaucracy in setting up the implementation process as explained by one respondent.

"This is what the recommendation said, government got the committee, government made the money available, we implemented it."
(Reparations committee)

This implementation however was specific to monetary payments. According to a committee member, they wrote to the cabinet about other aspects of the reparation recommendation for instance the reconstruction of the border town market of Namoo between Burkina Faso and Ghana but there has not been sufficient follow-up on this issue.

8.3.1.1 Structures for implementation

I found it intriguing that Ghana, without an implementation framework suggested by the commission had made strides in its implementation programme. I therefore inquired what the respondents thought about the approach taken by the NRC and whether or not the recommendation of implementation frameworks by the commission was relevant.

Some of the respondents commented that the issue of proposed structures is not relevant but rather what comes out as a result of these structures.

"I believe if you want to look at the effectiveness [of implementation], we should not limit ourselves to the structure proposed by the various commissions but we should rather look at what has come out of the implementation of the report based on these structures." (CSO)

Therefore, rather than looking at the structures in isolation, it would be helpful to scrutinise what the implementers have achieved with or without the structures and the effectiveness in discharging their duties and responsibilities assigned to them.

If you compare just the structures without looking at what they have been able to achieve using those structures you might realise that [one without proposed structures] might even have gone further [in implementation] than [one with proposed structures]." (CSO)

And that is precisely what happened in the Ghana case. The government was able to mobilise a follow up programme to carry out the implementation.

It was however suggested that proposing specific timelines would have been a more suitable alternative strategy for strengthening the frameworks for implementation. The NRC did not propose any time frames and it was therefore not possible to hold government accountable on the perceived delays before the implementation.

“The TRC coming out with a recommendations and proposing a structure and maybe giving government some kind of deadlines that ‘within this period, have to have this committee in place, within this period, this committee should [have done this].’ I think if they have the legal backing to do that, that would be more effective plan because now everything has the legal basis.” (CSO)

Of course it was pointed out that the advantage of having a structure with different lines of responsibility was the ability to know who to hold responsible if implementation did not take place. Such structure or framework can also act as a reference point, for instance in terms of looking for funds.

“A framework will demand that an institution or commission is put out there, that commission will definitely source funding from government to do things, or that commission will have the legal backing even to work with donor institutions ... and they have the legal backing of government to go and source for funding.” (CSO)

Furthermore, the presence of such structures have the potential of ensuring continuity of the implementation process because it is able to identify the responsible institutions for following through with the recommendations and hold them to account. One of the respondents proposed that it was because of the lack of such mechanisms to facilitate continuity that the issue of the NRC fell off the radar in Ghana.

“Because we [Ghana] don’t have that kind of framework, for now we don’t even know of anybody that is talking about the NRC recommendation, there is none.” (CSO)

However it was emphasised that there is always more to just the structure. The structure is a guide and there needs to be concrete action following the structure,

In terms of [follow up] structure, they may have the good structure, it may be very very good. The steps that you need to follow all spelt out well. But in terms of what’s coming out of the implementation of the recommendation by people who are on these structures, that is to me what counts ... Ghana may not have the structure but possibly, I’m not

saying we did but possibly the committee that was set up might have done well in terms of reparation ... [another country] that might be having whole structure and yet the people there never did any good work and so how do you conclude?" (CSO)

The emphasis is that whereas a good structure may be important, what is even more essential is the outcomes of such structures and whether they have been adequately used to achieve the initial objectives. If the structures remain redundant and are not put to use, then they do not serve any purpose. As such, the context is important and each case needs to be evaluated on its own merit. The specific situation in each case determines the structures and mechanisms for ensuring implementation and influences the level of compliance or noncompliance.

8.3.3 The role of civil society organisations

The role that civil society organisations played following the NRC process could also not be missed in the conversations. CDD especially took on an advocacy role. In the first instance, it carried out the victims' survey and used the findings from this survey to influence government action towards the implementation. Their strategy was to influence government policy to adapt to the realities regarding a specific policy. A staff of CDD commenting on their publication, *Democracy Watch*, which also featured information about the NRC "during those times [of] NRC issues" pointed out that one of the strategies was to ensure that government and the vital institutions got copies of their reports and other publications addressing specific issues of the TRC.

"We try sending them [government] copies so that they can also get a sense of what should be done and what will not help, what will help and all those things." Advocacy targeted at the policy makers is meant to empower "them to accept some practical issues and deal with them so that it will resolve some challenges or problems." (CSO)

A second aspect of civil society participation was on sensitisation by educating the public on the findings and recommendations of the NRC and acceptance of the report and the reparation benefits.

"[Public education] for the citizens, we are looking at how best they will also embrace and accept certain things. So that was the approach we adopted ... we were trying to let them know that some of these things are things that cannot be paid for." (CSO)

In line with this, they were instrumental in popularising the concept that the benefits that victims would receive from the government were a token of acknowledgement and appreciation of their suffering rather than a pay back of what they had lost or suffered.

“What we [civil society] used to do at the earlier stages after the report came out was to encourage people to accept the fact that no amount of money for compensation can actually pay for whatever pains and sufferings they have gone through in the past. (CSO)

The advocacy work was also directed at the government by making government aware of the peoples’ needs and giving them a direction in how to implement the recommendations. One of the issues raised in the survey for instance was the public perception about the recommendations, particularly the monetary payment.

“We kept on kept on trying to also encourage government to do what the report says, the recommendations part ... let me give you a practical example of what we went through ... we tried tracking how much people think should be the minimum and then a maximum compensation that government should [pay] based on what has already been decided around 2 million – 30 million cedis. If you ask this question to the people, then most of them were not happy with it. They saw the figure to be so low and therefore I remember when I did the first presentation on the report ... I pointed that I believe when the report comes out, there is definitely going to be a problem people accepting the monetary recommendation, the rich, and therefore there will be a need for the government to do some kind of public education and sensitize the people what they are trying to do.” (CSO)

According to CDD, the emphasis of this education and sensitisation should be on managing expectations because based on the survey, many of the potential beneficiaries expressed dissatisfaction with the suggested amount. This view on sensitization and education was also reiterated by a member of the Reparation Committee who explained that it would be beneficial to explain the meaning of the monetary benefits.

“Let them [the beneficiaries] know that whatever is being offered to them is not for payment for whatever they went through but rather a small like government acknowledging that ‘yes, at a point in time in your life, the state did something to you which wasn’t right’ so they should look at it

from that angle and not from the value or the point of the money ... just try to sensitize the people to understand what that compensation stands for.” (Reparations committee)

The scheduling of the survey and proposal by CDD to the government was also timely in that it was carried out just after the commission had concluded its activities and submitted the report to the government. The CDD therefore urged the government to carry out these sensitization drives before the report was released to the public. As explained by a member of CDD,

“We [CDD] was calling for those pre-education programmes so that people will accept this kind of recommendation ... [from] the reactions we gathered from the field, we were trying to compel the government, to encourage the government to undertake that kind of education so that people will accept it.” (CSO)

The respondent went on to recount a traumatic experience he had with a potential beneficiary to emphasise the role sensitization would play. Apparently, they tracked him to his office after hearing a radio show in which he was discussing the compensation amounts.

“He nearly beat me up! ... he was seriously losing it that we should go and tell the government that 2 million – 30 million wasn’t good. ‘How can I suffer this? I lost my 3 cars, I lost this, I lost that,’ he was just mentioning the things he lost during this period and this period, ‘and then you give me 30 million?’ It was hell for me. And so that incident even told me that government will have a problem.” (CSO)

8.3.4 The Reparations Committee

In order to kick start the reparation programme, a Reparations Committee was set up. A member of the Reparations Committee described the process of setting up the committee as *“purely administrative ... there was no instrument, no law made.”*

The responsibility was delegated to a three person team working under the office of the Attorney General.

“Carrying [out] an implementation of their report, there was no law. There wasn’t even a cabinet meeting, but the matter was discussed in parliament ... they told the Attorney General to have a small committee

who would determine peoples' situation, then they made some ceremony. Then it was all announced. Then we started going around the country ...but there wasn't an instrument, at most probably a cabinet decision and as you know, cabinet papers are not released." (Reparations committee)

The small committee comprised of the Attorney General, the Deputy Attorney General and Retired Supreme Court judge, Justice Crabbe, who appeared to be the most visible face of the team.

The Reparations Committee had their offices located at the Office of the Attorney General premises.

"Well, this is the office [where the interview was taking place]. We had a room there [down the corridor] where people could come and make their complaints. There were people downstairs. We had personnel. We had an accountant and other staff ... they were looking after the papers and then they organised and we went round the whole country." (Reparations committee)

By the time of my field visit, the monetary compensation had already been paid, I therefore inquired whether the Reparations Committee was still functioning and what it was currently involved in.

"To an extent, yes, in the sense that anybody can still come and make a complaint but we then we always write back and say, 'did you appear before the national reconciliation?'" (Reparations committee)

However, it was not clear whether the Reparations Committee followed up any compensation claims by persons who did not appear before the commission since they worked with the list that was compiled by the NRC of eligible beneficiaries. For such a person who did not appear before the commission, it was explained that they had to write a petition to the president and the case would then be followed up. However, they had not yet had any successful petitions by the time of the field work.

In terms of a time frame for the reparations committee, there was no time within which they had to have completed the work. As long as the money was made available, they made the necessary payments.

“No we didn’t have a time frame. We had the money and it was a question of going around the country paying people and that’s the end of it. If we finish paying, that’s it.” (Reparations committee)

Regarding the line of reporting, I inquired as to who the Reparations Committee was accountable to, I was informed that it was accountable to the government. The Reparations Committee reported directly to the Attorney General who was in turn accountable to parliament. The Committee *“occasionally wrote reports to the Attorney General”* who then presented them to the parliament. The report usually summarised the activities that had taken place.

“We reported on [on] questions of money, how much money, what we have done, how many we’ve paid, what remains to be done.” (Reparations committee)

My perception was that this committee worked independent of other stakeholders such as the former commissioners or civil society or victims. In theory it was a three member committee but in practice, it appeared only one of the members was actively involved in the day to day activities.

8.4 Implementation of the recommendations on reparation

From the discussions, I established that the role of implementing the recommendations on reparation was delegated to the Reparations Committee. This was headed by the Attorney General, Deputy Attorney General and a retired Supreme Court judge. By the time of the field visits, it was still being managed in the Attorney General’s Office although with a reduced number of staff. In the next sections, I elaborate on the specific activities that took place in regard to implementation.

8.4.1 Government’s response to implementation

According to a former NRC commissioner, the commission, in making the recommendations was confident of government compliance. They had the support of government in setting up the NRC as well as during the proceedings and they were therefore expectant that it would comply with the recommendations.

“We did not foresee government not implementing the recommendations. We could not reasonably have foreseen that. Government was very enthusiastic about the work, about the commission, government was

really really really supportive of the NRC ... based on government behaviour and its attitude towards the commission and the excitement that was in this country at the time of the work of the commission there was not reasonable basis for anyone to have anticipated that government might not implement the recommendations.” (Former NRC staff)

The president on receiving the report was also positive about the recommendations which reiterated the assumptions of the commission members of government commitment to the report.

“They [government] said they would let the attorney general go to school on it and they would take it seriously and would do what is right. That was that was the promise and it, it vindicated our position – government was going to act on these things. Government wanted it.” (Former NRC staff)

8.4.2 Funding

The NRC and the implementation of the recommendations on reparation was mostly funded by the government.

“Government funded almost exclusively with the exception of the Soros foundation and a bit of fund from USAID and that sort of thing.” (Former NRC staff)

From the report I received from the Reparations Committee, in terms of funding, it indicated the following;

“The government made available thirteen billion, two hundred and eleven cedis (¢13,211,000,000.00) to the National Reconciliation Implementation Secretariat. One billion (1,000,000,000) of this amount was apportioned for administrative expenses while twelve billion, two hundred and eleven cedis (¢12,211,000,000) was for reparation award to 2177 victims as recorded by the National Reconciliation Commission (NRC). The commission specified the amounts to be paid out to the listed victims in the report.” (Report of the Reparations Committee)

8.4.3 The role of the commissioners

The former commissioners did not continue to be involved with the NRC once they had submitted the report. According to one of the commissioners, this is because they were not mandated to. Also, they did not want their actions to be misinterpreted. She further stated an interesting analogy on why the commissioners should not be expected to chase after the report once it has been submitted to the responsible parties.

So you go to the doctor because you're ill, the doctor prescribes medication for you, the doctor ensures that it's the medication that is good for you, tells you how you should take it and all of that and then you expect the doctor to come to your house and put it in your mouth? What would that do? And what would that tell? Did you need to go to the hospital? If you did, why won't you take the medication? And why does it take the doctor [and] not members of your family for example to encourage you to take? Yes it's bitter medicine and all of that but you need to get well ... members of your family and your friends and so on encouraging you to do what the doctor prescribed so that you get better. It shouldn't take the doctor. If the doctor came in everyday to make sure you had put the medicine in your mouth and all the members of your family just stood around and stared, won't people start thinking this doctor has an agenda?" (Former NRC Staff)

Therefore, in addition to the mandate being clear on the role of the commissioner which does not extend beyond the compilation of the report and submitting it, engaging in the post-commission implementation would mean that the commissioners were attempting to carry out what is beyond what they were expected to do. In a contested political atmosphere, such endeavours might be misinterpreted and could in the end undermine what the commission set out to achieve.

From the above explanation, the role of the commission and the commissioners was not to pursue the implementation of their recommendations but to produce the report from their investigations and it was important to clearly demarcate the roles. Additionally however, the commissioners and other staff, particularly at the top had other positions elsewhere and once they had finished with the commission, they went back to their previous positions.

8.4.4 An Implementation Matrix for the implementation of reparations

With the setting up of the Reparations Committee, the programme for reparations was started in 2007. Below is a matrix of what was carried out.

8.4.4.1 Monetary compensation

The actual implementation involved country wide travel to meet with individual victims.

"We went round the country, we had the recommendations, we had one of these reports, [it] had at the end the list of the names of the people to whom reparations should be paid and the amount which should be paid and it became our responsibility to evenly distribute to them. So we went round the country, we did that." (Reparations Committee)

According to the NRC report, flat sums of money was to be paid based on the amounts proposed by the NRC. The notion of the flat sums was however questioned by some of the respondents because it appeared not to give any consideration to the individuality of the victims.

"You pay 5000 Cedis for a general's life and you pay 5000 Cedis for the life of you know somebody who was pushing a truck. Surely that's human life, value [is] the same but the socio-economics of it, very different." (CSO)

8.4.4.2 Symbolic measures

For the symbolic reparations, it appears that that there has not been an effort towards effecting action.

"Erecting monuments, none of it was done, rendering apologies, commemorative events, conferring national honours, those were the symbolic reparations. Zero! Zilch! Zero score, none of them was done."
(Former NRC staff)

This zero-implementation observation was shared across the board by all the respondents. All the respondents were aware of the symbolic measures and how these had not been carried out.

"I know some of the recommendations even said we should set up monuments and all those things acknowledging some people for all the

pains they went through especially those that we cannot really give them anything. I don't think we have even done any monuments to that effect."

(Reparations Committee)

The Reparations Committee was aware of the symbolic reparation recommendations but was unable to implement them because in the first place the committee only received the funds for the monetary compensation and secondly, there was a sense of unwillingness by the government to commit to the symbolic reparation, particularly the apologies. One member of the Reparations Committee explained that they made the effort to pursue the symbolic reparations but the government was unresponsive.

"We made recommendations, we prepared letters to go for apologies. Now we hit a [snag]. 'How can I apologise for something I haven't done?' You see these things were done by other people." (Reparations Committee)

When the issue of apology letters reached the cabinet for approval, there was reluctance about their implementation.

"Why do we have to apologise? ... Are we going to apologise on somebody's behalf?' But there were political implications because some of the people who were responsible for some of the atrocities were out of government and they were saying these things and that's why they ended the apologies." (Reparations Committee)

Some of the things they were saying included having no regret for the course of events during their regimes and justifying their acts, a fact the ruling regime considered would dilute the apologies because they would be apologising on behalf of individuals and governments that did not have any remorse for their actions.

An incident that was particularly recounted was of the former President Rawlings allegedly declaring that if he had the opportunity that was presented before him in those times he would do the same kind of things again. This attitude was interpreted by the majority of the Ghanaians that he was not remorseful for his actions.

The Ghanaian apology fiasco became complex and was described by one of the respondents as being;

"A case of the one living person whose 'I'm sorry' would have made a difference was unwilling to apologise and the one with the official

authority to apologise on everybody's behalf was not the one who did the things." (Reparations Committee)

In this case, the apologies would have remained hallow because the antagonist remained unrepentant. Had he been dead, perhaps the apologies would have been accepted. This impasse meant that the apologies issue was therefore left hanging.

8.4.4.3 Property Restitutions

Property restitutions as a programme was started before the commission took place. The Reparations Committee continued with the process of property returns as recommended by the commission.

For those who fell under the category of property losses, the Committee facilitated the process of returns. In some cases however, it was still either investigating or negotiating for the returns.

"Restitution for victims of illegal seizures of properties, lands, houses, farms and vehicles, most of it has been done. A lot of properties were duly confiscated, they had been confiscated by the state but they were returned to their rightful owners. Except in circumstances where third party rights had accumulated ... then there was need for negotiations and I think some of it is still going on." (Reparations Committee)

For those whose reputation had been tarnished, the 'restoration of their good name' has not yet happened.

8.4.4.4 Community repairation

In this case, the NRC recommended a market be rebuilt in Namoo. This also has not happened.

"We recommended that government helps them to restore the community [by building the market], it didn't happen." (Reparations Committee)

8.4.4.5 Scholarship scheme

I did not come across anyone who had benefitted from this scheme however according to the Reparations Committee, this was covered under the monetary compensation.

"We made some recommendations for scholarships for the children of you know people who had suffered atrocities, that one was paid, it was part of the monetary compensation." (Former NRC Staff)

The process under which it had been carried out was however not detailed.

8.4.4.6 Social security/pensions

It was not clear whether this scheme had taken off or if there were any beneficiaries from the programme.

"We made recommendations for social security provisions to be made ... they were very few, they concerned some soldiers that had been deprived of some facilities during some of these missions and when we looked at their grievances part of the solution for them consisted in getting some sort of social security payments to them and not just one off payment but like a pension scheme ... but I honestly don't know that one [the progress]." (Former NRC Staff)

According to one of the victims, who had been a soldier, he had only received the monetary compensation due to the violations he had endured during detention and exile but he was not considered for the social security provisions and was attempting to pursue that. As far as he was concerned he was not aware of any of his former colleagues who were also victims on such a scheme.

8.4.4.7 The Reparations Fund

There was not much awareness about this fund from respondents and it was even less talked about. One of the staff of the Reparation Committee however pointed out that there was consideration about this fund from the committee but it was not followed up.

"They even nominated the people [to compose the commission] but in the long run they didn't. When the reparations implements (sic) were made from the government coffers, they didn't set up this fund." (Reparations Committee)

As far as any of the respondents could tell, the fund had not been instituted and there were no contributions being made. The money for reparations was paid directly to the implementation secretariat in the Ministry of Justice and not to the fund.

8.4.5 Reactions to the reparation

According to the Reparations Committee, they encountered three responses to the payments that were being made.

The first category of beneficiaries were overwhelmed with the gesture and the amount that was being given. The respondent particularly refers to a case of a market woman who had lost all of her property during the destruction of a market in northern Ghana.

“We were in a place [in the north of Ghana] and I called this woman to the office, interrogated her, I was satisfied that she’s the person. I gave her a million [Cedis] and she just stood there looking at me, so I didn’t understand her, I said that’s your money and she’s looking at me, we were at the Attorney General’s office so I called the senior lawyer there and I said, ‘look, I am having this difficulty, I have given the woman the money she’s standing there and she doesn’t want to go away ... he said the woman standing there had never, let me put it in Uganda money, you know, has never had a shilling in her life, she never had a shilling like this in her life and now you are giving her a million shillings she doesn’t know what to do ... my officer went with them and opened a bank account for the woman.” (Reparations Committee)

In this case, the amount received was clearly beyond what the beneficiary expected.

One of the former NRC staff reported that for some individuals, they were grateful that the process of the NRC took place and that they were able to be compensated.

“People meet me and say ‘oh you were the so so and so of the NRC’ and every now and again it comes up but in a very opportunistic manner in partisan political discourse. People will use it against the other side to say that you are the ones who unearthed the evil or you are the ones who perpetrated the evil but the victims who receive reparations, I meet them and they come forward and say thank you.” (Former NRC Staff)

A second category felt that the amount that they received was not proportionate to the suffering they had endured.

"Other people were not as grateful. Somebody says, 'I suffered and that's all that you're giving me, take your money away.' And I had to call them, talk to them ... 'How much do you pay for someone who was killed? We are giving you something to start life again. If you reject it, we'll take it back. That is not nice, somebody is trying to be nice to you and you are trying to be offensive to that person.' Eventually she agreed, she took the money and that kind of thing." (Reparations Committee)

A third category did not even care about the monetary benefits distributed.

"Some people have come to me and they said, 'look, I don't need money, I am happy that there is a document which my children can see which tells them that something wrong was done to me, I'm satisfied with that. Money cannot pay me for my suffering.'" (Reparations Committee)

The reaction of the individuals according to a member the Reparation Committee all boils down to the individual temperaments.

"[It is] human nature. Somebody is forgiving, somebody harbours a grudge until he dies ... some people have written wonderful letters for me to thank the government on their behalf for having done such a sensible thing and having the reconciliation. The little money which some people get, they set up businesses. Other people are still crying for the money, 'it's not sufficient, they took my 5000, 50, 60,000 Ghanaian Cedis, if you take it to American dollars at that time and the worth of the American dollars now is even so much more, now you've given me this and they're fighting over it ... human nature, those who understand and are willing to forgive, those who understand but they feel they should have more than they have been given.'" (Reparations Committee)

On the other hand, a popular view was that following the NRC, people had moved on and were not expectant of the reparations.

"My preliminary thinking is that Ghanaian society was healed and reconciled with the realities of the past whilst the proceedings were on the way and people moved on with their lives. And those who received reparations, very few of them actually waited expectantly." (Former NRC Staff)

This is quite similar to my observation of the general attitude of individuals I interacted with regarding the issue of reparations. Whereas they considered it an important gesture, it was not viewed as a priority.

"I think that for most people, it was like a [bonus], even if it had not come, even if they had not received monetary reparation or compensations, they would have been just fine ... I do not think that you will find many Ghanaians who are sitting there waiting for some reparations from the NRC report to happen ... I think they have moved on." (CSO)

Of course, it is important to point out that this view was expressed by individuals who did not consider themselves direct victims of abuses.

The choice to focus on monetary payments over other forms has been viewed as an insufficient approach to addressing the issue of reconciliation in Ghana. The reconciliation component was regarded as being more significant. Selecting to focus on the money component was likened to pulling the plug on what many consider a huge step to the healing process. One of the respondents who was deeply involved with the NRC process and keen on the follow up commented that the selection of the form of reparation carried out undercut the work of the commission and undermined the recommendations.

"I thought it was a shame because the recommendations were quite helpful to strengthen the reconciliation process, issues like reconciliation day, issues like education for people who suffered and experienced abuse were helpful but the selectivity in terms of picking and choosing what to implement in my view was one of the greatest disservice that was done to the NRC." (CSO)

The government was criticised for selecting what suited them in consolidating their image. The payments coincidentally were also launched close to the end of the NPP term in 2007/2008 and has sometimes been viewed as being used for political gains to *"more or less get people to side with the party."* (Individual, informal interview)

The respondents were also of the view that the selection of the monetary payments was because it was easier to carry out. It would resonate more strongly with the direct victims but also at the same time give credence to government's assertion that it had done something with the recommendations.

According to a respondent from CDD who had carried out the victims' study following the NRC, some of the victims were not contented with the amount and timing of the monetary payments. The amount was too low for some of them who were expecting much bigger amounts but also the period between the NRC and actual payment took too long. He was nonetheless eager to distinguish between the "reconciliation process" and the "payments" because according to him, the reconciliation process empowered the victims into making their suffering public and this opportunity to speak of their experiences was useful to their healing. Reparation was therefore viewed as a bonus to the reconciliation process rather than a facilitator in this case.

8.5 Salient themes arising from the interviews

This section consists of topics that emerged from the interviews which I considered relevant in contextualising the social, political and economic understandings of the NRC and implementation. A number of them relate to the themes highlighted above but also cut across. I therefore considered it more pragmatic to discuss them separately. The discussion is divided into three parts; the key issues, challenges observed in the implementation and proposals for an ideal implementation programme.

8.5.1 Key issues

The key issues contains general observations by the respondents regarding the truth commission and the reparation programme.

8.5.1.1 Politics

Politics featured prominently in the establishment of Ghana's truth commission and the processes that followed it. One respondent pointed out that,

"The whole programme became like a battle ground between two political parties ... it was difficult for one side to really accept some recommendations." (CSO)

In most of the narratives, the respondents explained that the political undertones manifested as a division between one political party and the other, have always been part and parcel of Ghana's political scene. With the transition from the military to constitutional governments, this divide became even sharper with the rhetoric of 'us' against 'them'.

First, after the transformation to constitutional rule in 1993, a large number of the personalities from the PNDC military regime remained in power. After the 2000 presidential elections, the same crop of leaders remained because it had transformed itself into a political party, the NDC, and had won the elections. However, there was no will to address the past violations. A key reason being that the political elites were heavily implicated in perpetrating the very atrocities they were meant to address.

The discussion around the need for the truth commission became most pronounced during the 2000 presidential campaigns. The then opposition party of NPP made the issue of addressing past injustices a central component of their campaigns. *"The Kufour government had made it part of its election manifesto. That when he comes to power it is one of the things he is going to do."* (University Professor)

Secondly, there was a lot of disagreement on the mandate and protocol for the operation of the TRC.

"Both sides [NDC and NPP] agreed there was a need for some form of reconciliation but they did not agree on some of the modalities ... In fact the Rawlings group had to boycott the discussion on the bill, the national reconciliation bill and it was because they felt that there was a deliberate effort on the part of the Kufour government to witch hunt the Rawlings government." (University Professor)

In the narratives, it was pointed out that a key issue that arose from the debates was in defining the real purpose of the NRC and this was not properly done. Whereas the pro-NRC perceived it as a tool set up to genuinely address victims concerns and facilitate national reconciliation, the anti-NRC looked at it as a political tool to enhance the image of one group over the other or what one respondent referred to as the *'political propaganda value.'* This is because it was a well-known fact that some of the perpetrators were in positions of power and one of the main political groups, the NDC had a history of being instrumental in perpetuating the abuses. By bringing to the open the atrocious stories about their supposed opponents, it would discredit their opponents while at the same time paint the incumbent as sensitive to human rights issues.

The source of the disagreement stems from the decision to attempt to restrict the scope of the truth commission to only the non-democratic regimes of which Rawlings played a large part. This was therefore perceived as an anti Rawlings proceeding.

“People felt that, the other side felt that since Rawlings had been involved in two military coups, it was a direct attack on them. So they were advocating for including all regimes.” (CSO)

The attempt at excluding certain military and coup periods was also interpreted as the government protecting its own history. This strategy further fuelled the criticism about the partiality of the whole NRC process as explained below.

“I remember the first period that was proposed, the current administration [NDC] which was then in the opposition kicked the bill [out] simply because that period excluded I think the 1969 [coup] period ... and people believe that coup was supported by the administration that was then the incumbent [2001 - 2009] which is now the opposition. So they saw it like a deliberate attempt to exclude their past and include the past of this current administration.” (University Professor)

In the end however, all regimes right from independence in 1957 to 1993 were included. However, the damage had already been done by the Kufour government's insistence on the military regimes. The political skirmishes had already divided up sections of the population between those supporting the TRC and those remaining suspicious depending on their political affiliation.

“The government was too insistent which to me was unnecessary. If they had initially allowed to say [investigate] all regimes, it would have taken away that [suspicious] perception. In the end, more of the [findings] which would have been made would have still been under the Rawlings regime. So by the government party dragging this thing on and on, it created problems for the whole process right from the beginning and once that partisanship idea came into it, people were dealing with it along those lines ... People supportive of the Kufuor government think it is a time for them to come and say all those things that happened to them while these people, the Rawlings group were on the offensive.” (University Professor)

Had the Kufuor administration been tactful, they could have eliminated the suspicions of partiality because according to all of the respondents, the Rawlings group which was crying foul would still have had the more incriminating findings against their various previous administrations because they had held power the longest.

"They [NPP] failed at that time to understand the fact that, forgetting about the AFRC [following Rawlings' 1979 Coup] which was just about a year and 6 months or so sort of regime, the PNDC, right up to NDC, PNDC alone was in power for about 18 to 19 years, so definitely when you are looking at human rights abuses of past regimes, they will carry a whole lot on their head already, more so it was a military regime. So I think that was what they failed to appreciate ... because I can't see how a military regime that was in power for 3 years would have so much human rights abuses compared to one that was in power for 18 years and over."
(University Professor)

These political debates over the NRC were then interpreted as one political group attempting to tarnish the image of the other.

"I also share the opinion that it was a calculated attempt by the incumbent at that time to weaken the opposition by bringing out their atrocities that they committed for people to see how badly they were and all those things ... you know politicians will do whatever they have to do in order to maintain power ... so even if they have to dig your past and paint your past which is a bit brighter in a more darker manner for you to look not presentable to those who will be voting, they'll do. So people also believe that was the mentality of the administration at that time and that was how the whole process was run." (CSO)

Despite the political brawls, the whole process of the NRC was not written off, particularly, its potential benefit to the victims. However, the respondents continuously emphasised how the inclusion of political issues tarnished its image and possible impact.

"I personally think it [the NRC] was a good exercise. If we had tried as much as possible to take out the politics, it would have been a very very successful thing ... politics down-played some of the success stories we could have witnessed about the whole process." (CSO)

One respondent raised an interesting observation regarding the politicisation of a truth commission process and the implementation of the recommendations.

"When you adopt that stand now [accusing the government of using the NRC as a political witch hunting tool], now if you even see the recommendation to be something good, will you have the moral right to

do it because people will start judging you. When you were in the opposition, you saw this to be political and now you're implementing the same political agenda recommendations?" (Individual, informal interview)

This observation is reflected in the fact that since the NDC took over power in 2009, the issue of the NRC or the continuation of the implementation of the recommendations was shelved. At the time of the field work, only the Attorney General's office through the Reparations Committee appeared to be the only institution still concerned with reparation or the NRC. In every interview, either the respondent expressed that they were not aware of what was going on or they would refer me to the Attorney General's office for further information.

The third issue related to politics has been on the selection of which aspects of the recommendations to implement. By focusing on reparations, which happens to be more visible, it has been interpreted as a political decision aimed at bolstering the image of the government and adding to its credibility as for instance a more human rights friendly government concerned about the rights of those who had been victimised. The timing of such programmes very close to the elections was also seen as a strategic tool to gain votes and get re-elected. So in a way it was motivated by the "selfish interest" of the government to front themselves as caring about the victims.

Furthermore, it was argued by some of the respondents that it was inappropriate for Ministry of Justice and the office of the Attorney General to be given the responsibility of implementation yet they are political positions. Their involvement made the whole process liable to political influences. For instance when the government changes, these positions also change and in most cases, it will be party loyalists appointed to such posts.

8.5.12 Classification of victims

In Ghana's case, the victims were not dominated by a particular group or class but it cut across society. Political elites as well as the local populations were all targeted.

"[The violence] cut across because some of the things that they did, sometimes ordinary traders at Makola [market], they say you've sold above control price, and so all your things are taken away or your shop is burnt and things like that ... they went into villages and maltreated

people and so on while others were also targeted as political elite ... when the government took over there were several political elites to whom they targeted (sic)." (Reparations Committee)

The NRC did not provide a breakdown of the socio-economic status of the victims and neither did the different respondents. However, the response of the different victims to the reparation and in particular the monetary compensation could be related to their status as victims. Whereas some actually needed it, for some it was inconsequential while for others it was not enough.

8.5.1.3 Indifference to the post NRC process

During the field work, it was obvious that a lot of the ordinary people were not following the NRC process or outcome. A lot of the times, although many were aware of the content of the reparation recommendation they confessed that they had not read the report. When I asked specific questions about items contained in the report, they responded that they had not been able to read the report.

A similar response was also given regarding the status of the implementation. For instance, one respondent who was quite knowledgeable about the NRC and the circumstances surrounding its establishment surprisingly expressed unfamiliarity to the payment of reparation.

"There was recommendations for reparations but I remember for a very long time nothing was said about it and once, at one time it came in the papers that they have started paying. Whether or not they actually paid, I don't remember but there were recommendations for reparations."
(CSO)

When I inquired into the respondents' views on the work that the Reparations Committee had done so far regarding the processes they had used to identify and pay out the monetary compensation, I often got a variation of statements such as;

"I have to confess, I really don't know much about the process. That I have to confess, I really do not know much about it." (Individual, informal interview)

A lot of the people relied on media for such information.

“most of the times, you get the stories from the dailies and all those things ... people would even call and find out, radio host programmes would call key people like those ministries and then the committees and find out from them what has been happening. So we’re getting that information ... in terms of the process, whether you need to go here, go and register, do A, B and C before you get your funds, whether the funds are transferred to your account or you are given physical cash and all that. If I tell you I know I would not be fair to myself that I say I know it. I do not know the process.” (CSO)

This confession of not knowing about what is happening would then be followed by, “but have you heard any information on that [reparation]?” directed at me. It was puzzling whether the question was asked in genuine curiosity or to gauge how much I knew about what was happening.

From the interviews, it was also evident that the respondents interpreted the fact that government had not carried out the implementation of symbolic measures as indicative of the government’s and the rest of the Ghanaian population’s apathy towards the symbolic measures.

“Those ones [non implementation of the symbolic measures] are glaring signs of we not really bothering because if I believe for instance if we’ve done the monuments, people would definitely acknowledge that okay, this symbol is also telling others that whatever stories I’m telling that I went through this period is true and that also would have been a source of maybe joy for some people.” (Reparations Committee)

8.5.1.4 Changing priorities

For a number of individuals and civil society organisations, once the commission had closed its doors, they moved on to different areas. One respondent who had been active with the NRC argued that he had to concentrate on other areas where he could get an actual income. Besides, the NRC was not ‘catchy’ anymore.

“As with all things when life is reduced to trying to make a living. I changed my writing priorities, I was writing a lot on the NRC ... [but] some things became more compelling ... [things] that affect policy immediately.” (CSO)

The post-NRC phase seemed not to be financially rewarding. The government was dragging its feet on the implementation processes and the priority areas for both government and the international actors had shifted which therefore drew a large section of actors away from the process.

8.5.1.5 The willingness and ability to implement recommendations

Whereas there was consensus on the impact of limited funds for the implementation of the recommendations on reparations, a number of respondents pointed out that there is a difference between the will to implement and the ability to do so. Even if the ability to implement is there but the will is lacking, then the whole programme has the likelihood of failure. The ability in this context mainly refers to the funding while the will is the desire to see that the intentions are transformed into action.

“All these important recommendations will be made but sometimes it also entails funding to implement them and the government after even allowing it to take place thinks it has done more than enough and they decide to do something else or they claim it will not have enough of those resources to do it and it will all go back to for what purpose was the TRC set up, if the main purpose was to tarnish the image of one group, then by just going through the process, we would have done so and so the government will not even have the eagerness and the political will to continue from there.” (CSO)

It was also interesting that the government chose a scheme that was financially more demanding, that is, the monetary compensation, over those which might have cost less, such as the symbolic measures. One argument advanced for this was that it could be viewed as a tangible sign that the government was actually getting the work done.

“Payment of monetary compensation constituted an immediate announcement to people who were yearning for it or who were eager for it that government was anxious to implement the recommendations. And from a political standpoint, once you started that, you could always say that you are working on it. The surprising thing is that government in my view did the things that were far more expensive, financially expensive and didn’t do the things that would have cost nothing – apologising to women for example. Two bundles of paper, two reams of paper with an

apology or a certificate would have been sufficient for the symbolic reparations [apologies].” (Former NRC Staff)

He further elaborates as below;

“Even if the monies were small individually, collectively it was a huge amount for government to come up with. They could easily erect bronze statues, one in the centre of every town, the ten capital cities in Ghana I mean the regional capitals. They could easily cause the hospitals, ‘here is a circular, build.’ And they can take 100 years to do but the point is you can say that government was doing something about it. Apology, they could have done it so easily, all these things, community reparations in that village you give the command to the district chief executive the MPs common fund, they apply some of it in two years the community would be rejuvenated. These are things they could have done and a reparations implementation committee could easily make measures one could easily have been established to ensure that this gets done. Not one was done. Not any of these were done.” (Former NRC Staff)

A number of the respondents also argued that implementation of reparations, particularly those involving structural or institutional changes would have the potential of benefitting more members of the society than only the victims in the long run and thereby contribute to the overall development if put in place.

In one case, a respondent discussed a paper he wrote as part of the National Governance Programme in which he recommended that as part of reparation, government should also focus on institutional building.

“institutional arrangements which will outlive the government itself ... so if you created a trauma and counselling unit or department at every district and every regional hospital, five or ten years later it will not be about victims of atrocities in the past, it will be about accident victims and people suffering domestic violence and all of that. It will serve the greater social and public good. It is a shame that government didn’t do those thing.” (CSO)

Similarly, with the symbolic gestures, it was perceived these could have been done in a way that would have gone a long way in showing the government empathising with the victims.

“The apology for women for example it would have been a one off thing but it would have been hugely symbolic of government’s remorse and one could say that the president had on behalf of the people apologised to women for whatever it would have been worth.” (CSO)

The reluctance by the government to implement the symbolic aspects of reparation to an extent was interpreted as the government having had ulterior motives to the whole NRC and reparation agenda.

It however also raises a complex issue of expecting the incumbent to take responsibility for atrocities committed by a previous regime. As elaborated by one of the respondents, in Ghana, the previous regime actually made it difficult for the incumbent government because they refused to show remorse for their actions. How could the NPP then offer apologies while members of the NDC and their apologists continued to justify their actions? What would be the impact of these apologies or monuments to the victims?

8.5.1.6 Role of the international community

Ghana’s TRC was exceptionally localised in terms of funding, participation and media coverage. Despite this, a number of the respondents felt that the international community should have been more involved, particularly in terms of making the government prioritise reparation and in funding the implementation.

“The international community too can be of help. This it can insist that some of these things must be done not just going through the process but the implementations stage and indeed that also, the international community will also be able to put its own resources to assist in the implementation.” (CSO)

“Issues of human rights is now international, it’s no longer, in fact we now talk of sovereignty with responsibility so if it’s matters about human rights, the international community can intervene ... issues of human rights must be of interest to the international community and it must do whatever it can to see and to help to see to the implementation.” (University Professor)

The role of ICTJ was however commended by CDD and the organisations who were involved in the coalition. Furthermore, one of the former staff of the NRC explained

how they networked with both regional and international experts on truth commissions to improve the Ghana process. As much as the funding and impetus for the commission was local, there was still international involvement, albeit at a lower scale in comparison to other commissions.

8.5.1.8 Context specific approaches

A number of the respondents emphasised that one needed to understand Ghana's case within Ghana's context rather than understanding it from the lens of other societies that have gone through truth commission mechanisms, particularly those initiated after a war.

"How some people conceive of or conceptualise TRCs, it's the problem. Because they think of it in mostly in terms of post war which I think is a flawed thinking. Because they think of it in terms of post war situations then they expect post war responses or post war measures." (CSO)

According to the respondent, sometimes these contexts within which a commission emerges determines the perceptions towards it and the outcomes. In Ghana's case, whereas the truth commission was a necessary endeavour, mainly because of the experiences of repression, it was assumed that payment of reparations did not stand out as a priority. What was considered critical was the importance of the overall process of striving to attain national reconciliation.

"My view is, in the case of Ghana, it was so so necessary [for the commission to take place]. To be confident to say it was so so necessary, you must read not just reparations, it's an end product, but the means matter, the process also mattered and I think that in Ghana the process mattered more than the outcome." (Former NRC staff)

Additionally, the focus in Ghana was in getting the narrative out by giving an opportunity to the victims to tell of their experiences and for most of the respondents, it was assumed that the victims did not come with a mind-set expectant of compensation.

"In Ghana you have a situation where most people who came forward were surprised when sometimes the commission would ask 'so what do you want us to do for you or in other words when they ask questions about reparations because most people didn't come with a reparative motive in mind.'" (former NRC Staff)

Reparations therefore took on a different meaning beyond material or quantifiable benefits.

"They [the victims] felt that there was an opportunity to come and vent [through the TRC], tell what happened to them and most did it with that in mind, not the expectation of reparations. So for the woman who says, 'I just wanted to know how my loved one died, is it true that they tied cement block on his back and threw him into the high seas?' or 'I want my father's remains so I can bury it, I don't care how, I just want to give him a dignified burial.' That's the reparations they were seeking. For those who said, 'well, you know, our loved ones were tortured, and murdered or executed by the state and buried in mud graves we want to bury them in a befitting manner.' That's the reparations, so once we were able to exhume their remains, identify them properly, preserve them, hand them over and they went and buried and put a mark there and that's their loved ones graves. Then the children who were then you know 18 or 23 know that their father, that's their father's grave. For them that was it."
(Reparations Committee)

From this perspective, there was a lot of emphasis on the process of narrating the experiences through the NRC and what it did for the victims.

"Was that process in any way valuable to them, the healing, does it come in the reparations? I believe that the implementation of a reparations programme would undoubtedly contribute to the healing process I think but most importantly it would contribute to the rehabilitation of people, that's what the reparations will do. But if it is about reconciliation, if it is about the healing I think that a good chunk of it happens during the hearing process, the activities surrounding the mere fact of making a statement, the fact of testifying before the commission, the fact of the state itself coming forward and commiserating with the victims, the fact of victims having a space to congregate not under trees playing draughts and celebrating misery or whatever but sometimes coming together to articulate strong views and even the demands that become part of the reparations programme." (CSO)

Of course, this perception draws quite heavily on the purpose for which the commission was created. National reconciliation was a key component to the existence of the commission and therefore it was highly likely that the perceptions to its

outcomes would be viewed through its conformity or nonconformity to facilitating reconciliation.

Most of the respondents therefore argued that rather than focusing on the outcomes, in this case meaning its compliance with the implementation of reparation which was the focus of my research, the NRC should be studied in tandem with the process.

“There is a good deal of value in the TRC process itself which should not be ignored or glossed over even as we pay attention to the outcomes. But if you look only at outcome and your outcome is measured in terms of what has happened to the things written in the book? There are things that as I have told you in the case of Ghana, there are things that have happened not as a result of what came out of the book but they have happened because of the process, the military making changes, the security, I mean especially the police revamping their courses, the course structure, command and control introducing human rights and democratic policing principles or courses.” (CSO)

A lot of the times, the respondents pointed out that it was not about monetary benefits but letting their experiences be known.

“[There was] a woman who came and said ‘my son who was slightly mentally handicapped was shot and he didn’t understand what a curfew was and soldiers chased him into the house because he had broken a curfew, he was mentally unwell and rushed into the house. They chased him and shot him in the back and then when I picked him up in my arms they pointed a gun at me and said I should leave him and so my son bled to death and this was just about 6:30 in the evening, curfew was 6 until the next morning, 6am when the curfew was lifted then you could go to the aid of your dying son.’ Now for that woman, twenty something years on 1979 to 2003, coming forward to share that story was not about monetary reparations and when she was asked that question, she looked surprised because for her it was about not money but coming to say this is what these people did to me.” (Former NRC staff)

This is not to say that all those who testified did not expect reparations. However, it was clear that those who were particularly well-off tended not to pursue the issue of reparations. Others however clearly expected a payback for their losses.

“There were people who came [to testify because of the reparations] and there were people who were even embarrassed at the suggestion [of reparations]. And some people didn’t come to testify because they felt that the public will think that they came to the commission because of reparations. A lot of rich people did not ... want to testify in public because of the tag of reparations seeking, rent seeking behaviours. But there were those who came and said ... ‘soldiers seized my tray load of doughnuts and it was the family’s capital. We had even borrowed money to buy the flour and the baking powder and all of that and soldiers just sold it or ate it and whatever. It was at that time let’s say 4 pounds, in today’s terms maybe it’s about 800 Ghana Cedis and I would want it back. There were people who came forward and said so.” (Former NRC staff)

It is unfortunate that these views expressed by respondents about the importance of the process over the outcomes could not be corroborated due to the few numbers of victims I interviewed. Those I interviewed clearly wanted and expected reparations, as highlighted in the CDD survey following the TRC. The view is therefore dependent on the position of the respondent.

8.5.1.9 The Individual versus National

I encountered instances where the respondents attempted to explain the distinction of the outcome of the NRC process at the individual level and the national level. This was particularly in respect to the reconciliation aspect of the commission. They argued that at the individual level, there was a more positive outcome than at the national and there was a snag in transferring the individual experiences to the national.

“It’s the difficulties in trying to transfer that healing and reconciliation at the individual level to the national level ... I think from the individual level, it worked for some people but moving it from that level to the national, that is where we started looking at the political side of it ... I don’t think we really really appreciated this thing, the kind of healing if we had allowed the whole process to go on without the political undertone it would bring to this nation ... we achieved so much from it but I believe we could have achieved more if we had allowed the whole process go without the political undertones.” (Former NRC Staff)

My perception was that the individual healing was again an aspect speculated upon by individuals who were not direct victims. It was not possible to verify this position because of the small sample size of the direct victims I encountered. Although the victims I interviewed reported “*feeling happy*” with the process from the perspective that it gave them a chance to tell their story, they still conveyed that they were not content with the entire process because of what they received as reparation. I would therefore be hesitant to refer to that as having experienced “healing” or “individual reconciliation.”

8.5.2 Challenges in implementation

Below are the challenges identified by the respondents in the implementation of the reparations process.

8.5.2.1 Expectations

During the implementation of the reparation programme, some of the respondents pointed out the disparity between what the victims expected to get and what they actually got. The financial compensation was paid out not on the basis of what the victims lost but rather a token sum that was fixed at between two million and thirty million Cedis. Sometimes, the amount that a victim got was considered by them as not being proportionate to the loss they had suffered and they therefore expressed disappointment.

According to a staff at CDD, after they had carried out the victims’ survey, they urged the implementing institution to take on the issue of expectation seriously.

“We also straight away went on to say that we’re asking that whatever institution will be put in place to start working on this reparation should not just jump [in] ... they should first start looking at how to get people to accept whatever they are going to give them ... and we were calling for the education before the payment starts so that if the person is coming to take, whether one million or two million, the person knows that this is just an acknowledgement of the state wrong doings some time past and not the state paying you for the wrongs you suffered.” (CSO)

One of the victims I interviewed had received 1,500 Cedis as compensation and he was bitter over the amount because he felt that it did not come close to representing what

he had been through. He was arrested, shot, tortured and detained for nine years and after his release in 1992, he went into exile for eight years. In addition to this, he was laid off from his military position and not awarded the pensions he believes he is entitled to. Although it was not clear from the discussion whether his disgruntlement was with the army for not paying him his due pension or with the NRC and the reparation for awarding a small amount, he still expressed that it was unfair to categorise him with other individuals who might have suffered less harm but still received the same amount.

Despite his concerns, he was using the experience and evidence from the NRC to pursue legal action against the army for denying him the pensions because according to him, the commission had established that his arrest and detention were unlawful and should therefore be interpreted as being in active service which would therefore compute a higher number of active service years in the army than had been computed for him. This would entitle him to receive pensions for which he had been ineligible.

8.5.2.2 Missing information in the report

According the Reparations Committee, they ran into the issue of persons whose names appeared in the report but no monetary compensation was allocated to them.

“There were other people who actually appeared before the commission, their names are in the book but no recommendation was made by the report ... we asked them to write a petition to the president. It was forwarded to the attorney General, I had it I went to brief, sometimes called them and interviewed them, and then later reparation managed to be paid to them.” (Reparations Committee)

This same format of writing a petition to the president and verification process by the Reparations Committee was also carried out for individuals whose name had not appeared on the list. These are individuals who had submitted testimonies but were not entitled to the specific reparations.

“Looking at the report of the NRC, the report itself enumerated certain people who should be paid and the amount they should be paid ... we had a situation where people’s names were mentioned as having suffered this but unfortunately, when they made the list of people who should be paid anything, their names wasn’t there. They also made a request to us and we had to prepare a supplementary list for two occasions. For authority

to be given to us to pay the money. I think we paid some and then we were expecting some 5 billion to come which never came.” (Reparations Committee)

By the time of the field work, these cases were still unresolved according to the Reparations Committee since it was unlikely that more money would be released. Additionally, the former NRC staff were not in agreement with the issue of the supplementary list of victims suspecting that there could be cases of fraud and yet the Reparations Committee might not have a similar rigorous method of verifying the narratives of the victims.

8.5.2.3 New testimonies

Similar to the point above, once the payment of reparation had started, the Reparations Committee reported that they encountered various individuals who showed up claiming for reparation. These individuals claimed that they were victims but had not got the opportunity to appear before the commission. Like the previous category of missing information, they were also directed to write a petition to the president and were reviewed on a case by case basis.

“After the commission had finished its work and we started paying them, people got to know and ‘ah! I missed an opportunity, why didn’t I go before the commission?’ And they come and tell me what I call cock and bull stories, how they were sick, how they couldn’t do anything. In all those cases, then I say, write a petition to the president so that the case can be examined.” (Reparations Committee)

From the discussion with the Reparations Committee and former NRC staff, it appears that for such individuals who turn up to claim for compensation, as long as they did not appear before the commission or have their testimonies recorded, then they could not proceed further in their claims.

“NRC is now being used as a yard stick. If you had been dismissed from the army or you had damaged whatever the case and you didn’t appear before the NRC and now you are asking for certain things, then now you see the NRC as the yard stick. Did you appear before the NRC, no you didn’t, that’s the end of it so even if you were entitled to something [there is no way].” (Reparations Committee)

8.5.2.4 Fraud

A staff of the Reparations Committee cited cases of fraud by members of public who would try to take advantage to defraud the committee by pretending to be bona fide victims.

“People who had hadn’t lost anything or had lost something but they thought ‘oh this was an occasion to go and make money.’ You know Africans our names are really similar. They’ve mentioned a name but the person had to bring an identity ... you had to get to the story, to make sure this is the person.” (Reparations Committee)

“At times we had mistaken identity. I remember on about two occasions, somebody came and sat down, because all these things were published, the person was able to tell stories that were not his.” (Reparations Committee)

The best approach to this according to the Reparations Committee was to attempt to verify the stories and individuals, including finding witnesses to corroborate their stories if there was any doubt. My opinion from observing how the Citizen Registration system works in comparison to other African countries was that such cases of fraud would not have been too common.

8.5.2.5 Conflicting structures

The Reparations committee also raised an issue of cases where institutions responsible for paying the victims were either reluctant or were not updating their compensation payment schemes to reflect the changing economy. The two cases the respondent highlighted are related to the military compensations for dismissal.

“[Some people] who even appeared before the commission, the commission says pay them compensation but the military people are saying, ‘ah, they were dismissed in 1981 therefore we’re going to pay them 1981 rates.’ I have a file here, Mrs [names withheld], do you know what she is going to get? Two Cedis for 37 years’ service to her country. Two Cedis!” (Reparations Committee)

In such cases, the victims sought the counsel of the Attorney general and the reparations committee. They accordingly pointed out that it was unrealistic to use the

conversion rates based on the period in which the individual was dismissed which should be amended.

"We've written to them. We had a meeting with the military people and we decided that we are going to amend the law to make it possible and they should be paid at the current rate so the processes of reconciliation is going on." (Reparations Committee)

Additionally, it was pointed out that dealing with the military regarding certain awards was problematic.

"You take the military for example, we wrote a cabinet paper that certain soldiers should be given certain honours. It was accepted and then soldiers came back and said, 'ah you might be driving a wedge between us, there are other people who do not think that they should, so you should be careful.' You see the problem?" (Reparations Committee)

I did not see the problem because he declined to elaborate on the issue however, by including it in the challenges, it highlights how sometimes the reparations and implementing systems can sometimes clash with established institutions.

8.5.2.6 Overlapping programmes

Before the commission and its recommendation, a process of returning property that had been seized during previous regimes had already been implemented and was being carried out. A committee chaired by Betty Mould-Iddrisu was set up in the Attorney General's office to oversee the property returns.

The commission also proposed property returns as one of the recommendations in reparations. The office of the Attorney General had already been involved in this process and the Reparations Committee simply built on what was in place.

According to the Reparations Committee, property returns tended to be more complicated and often lengthy processes. In some cases, the sitting occupants simply refused to vacate the property.

"It's not all smooth sailing. It took me three years to get somebody from a house which had been confiscated. She says, 'Oh it shouldn't be given to that man. I was in the security, such a very bad man, he did this, he did this, he did this.' I said, 'thank you very much, the government says give

his house to him.’ Each time we would write a letter, put a decree to get [her] out of the house. Eventually, [she] realised that [she] could not continue, then [she] did [left].” (Reparations Committee)

In other cases, the property had changed ownership through a purchase which complicated the process. In some cases however, a decision had already been made about it in the courts, which in many cases took precedence.

“We have also in respect of certain properties [which] had been given to some people and it was not recorded in the Council. So as far as our records read, the properties are confiscated with government. They gave the property to the real owner and some body goes there and says, ‘ah ah ah, I bought the property, these are my documents.’ Which means somebody at that time had done something unknown to cause all sorts of complications, legal and otherwise.” (Reparations Committee)

Similarly, some of the programmes that were recommended under reparations were carried out outside the context of reparations.

“Establishment of special facilities such as trauma counselling departments at each of the hospitals, that wasn’t done as a government policy but as a result of the horrendous testimonies that came out. Some of the hospitals took it upon themselves to mainstream trauma counselling and that sort of thing. Some of them have it, not because government said do it but because the hospital administration or administration decided to do it. I do not know whether to count that as [reparation being] done or not done, I think it’s not done ... government could have easily issued a directive, and it would have been done as a government policy.” (CSO)

According to this respondent, this was an oversight of the government in not promoting these programmes under reparation since the NRC had proposed similar measures.

8.5.2.7 Political influences

The issue of politics and its divisive tendencies has been persistent in the NRC process. In terms of implementation, it was pointed out more as a case of unwillingness than inability.

"Sometimes politicians have other priorities. The will to fully implement the recommendations of the report was there, the heart was, I wouldn't say the flesh was weak, I think they had other priorities which to them seemed more important." (CSO)

The limited popularisation of the report was also attributed to political issues. For instance a number of the respondents wondered how I was able to access the NRC report because it was not in circulation.

"Kufour's government introduced the NRC and this government [Atta Mills Government of the NDC] saw the NRC as an attack on its heritage ... one of their first acts, the first things they did was to pull the NRC report off the government website." (CSO)

The respondents also wondered whether the government going silent upon receiving the NRC report was not a means to counteract the arguments that were being fronted of the NRC being used by the sitting government for political gains during the election campaigns and further on to malign the previous governments.

"I suspect that once the government got the report, it was October 2004, elections were in December 2004 ... elections were just at the corner and for whatever reason I think they took the view that they would not make political capital out of it. The NDC which was then in the opposition but now in government was crying foul all along that this was intended to embarrass them and would be used for political purposes and campaigning and all of that. Throughout the 2004 campaigns, the elections, nobody made reference to the NRC report, government didn't try to use it to paint the opposition black or to get mileage out of it."
(University Professor)

Similarly, the reduction of the NRC discourse in public has also been attributed to the change in government. After 2009, the NDC which was mainly opposed to the NRC took over from the NPP that set it up. It was therefore not in their interest to acknowledge an exercise that publically outed their past atrocities nor attempt to pick up from where the previous government had left off.

8.5.3 Proposed framework for implementation

A number of the respondents also expressed what they observed as being a more useful framework for the implementation of reparations as elaborated below.

8.5.3.1 Nonpartisan institution

A number of respondents viewed the Ministry of Justice and Attorney General's office as being partisan because the heads of these institutions were appointed by the government. As such, it jeopardised the future of implementation if another party won an election. The respondents were of the view that an independent institution or government body takes over the implementation programme.

"A ministry, government department or agency on its own which has nothing to do with politics so it doesn't matter which party is in power, they [the institution] are looking at what the laws of the land says and the legal documents we have and they can deal with these sort of issues without necessarily looking at it from the party angle." (CSO)

Similar to the issue of a nonpartisan institution, the respondents also proposed that the individual that heads the implementation needs to be independent of partisan influence, whether the ruling government or the opposition.

The fact that the Attorney General was instituted as the implementing office already influenced the thinking that it would not be free from political influences simply because the Attorney general is a political appointment dependent on the government or party in power or as aptly referred to one of the respondents, he is a '*party man*.' It would therefore be more practical to appoint a body whose set up and personnel would not be changed with the composition of the government which therefore would give it a power of independence.

8.5.3.2 Safeguarding the report and recommendations

Some of the respondents argued that the NRC and its recommendations were not protected enough to ensure continuity.

"The Laws establishing future TRCs should consider including making the recommendations, the findings mandatory for each successive government to follow so that citizens can hold them accountable. As of

now ... once the regime is no longer there, it is seen that this regime came with it, it's gone with it.” (CSO)

Commissions take place within a political context and it is difficult to separate the political influences from the work of the commission itself. A change of regime for instance can have significant impact on the commission. This was particularly perceptible in Ghana following the political contestations surrounding the commission. With this in mind, there was a concern for finding means to safeguard the commission and its outcome from political influences and ensure that it can survive and operate from outside the political controls. According to them, the commission should not be left at the mercy of the whims of the outgoing or incoming regimes as happened in Ghana. Despite the political context and manifesto of each group, there needs to be a process that ensures continuity for the commission despite a change in government.

A number of the respondents further pointed out that implementation could become difficult because there is no law that can be enforced to encourage implementation. Whereas there is a law establishing truth commissions, there is no such safeguards to guarantee the outcome of their recommendations, more so where no frameworks are even suggested.

“They [truth commissions] have the legal backing setting them up but in that legal instrument, do they have the authority to decide that ‘we recommend this, and we want this to be done?’ More so, that institution is not a permanent institution, it finishes its work, it’s off.” (CSO)

This issue is even vital considering that implementation of the whole range of recommendations is usually not a one-off matter but realistically is spread over time. The regulations would therefore make it mandatory irrespective of the power holder or government.

8.5.3.2 Recommendations and development

The linkages between development, the TRC and reparations were highlighted in the discussions.

“A lot of the recommendations more or less dovetail into national developmental processes ... [and] most countries do have what we call national development programmes and so if societies are able to infuse

these recommendations into the national agenda so it becomes part of the [national development programmes].” (CSO)

This approach is not only specific for reparation but the whole range of recommendations. It gives a more holistic perspective to the work of the commissions which goes beyond the individual aspect to societal harms. Even if such recommendations in the short term may target individuals for instance in terms of prioritisation or preferential treatment, in the long run they can be broadened to serve the entire community. The key is in recommending sustainable measures that meet not only the short term individual needs of the victims but fit into the development agenda to uplift the entire society. An example that was cited by one of the respondents for instance was that the NRC recommended that a psychological unit be set up in each regional or district hospital. Whereas this may target victims, indirectly, it also serves the general community because there are a number of other reasons that would make a psychological unit necessary. It is therefore paramount to ensure that once such a unit is established it has to be sustainable and this means incorporating it in the development agenda, allocating a budget for it and focusing on long term goals for it rather than a one-off project that caters to the victims and then is disbanded or abandoned with a change in government.

Society and development should be viewed as mutually inclusive. The harms suffered by individuals could cause them to withdraw from being active participants in society. In repairing these individuals, the goal should be to ensure they are reintegrated back into and made part of the society and so repair is not only for the individual but repairing the society to become more inclusive. Similarly, the commission itself was not intended to benefit only the individuals but the society as a whole. So the issue of reparations should be looked at from multiple layers, responding to the individual and also to the deficits that made the abuses occur.

8.5.3.4 A multi-layered approach

The implementation of the reparation programme was sometimes viewed as unsystematic. The focus on a lump sum one-off payment excluded the potential benefits that would have been reaped from other forms of redress. In practice, there were different levels of need that went beyond the one-off payment. For instance it is valid that some of the victims needed the money to recuperate the losses they had

suffered, particularly small business owners like the market women but it was not possible to pay a corresponding value to victims who suffered larger property losses.

There was also constant reference that reparation needed to be '*a real statement*' of which it was not. By this, they expected to witness remorse. The reference to this was in the apologies that never occurred. The assumption was that such a move would have shown that the commission was a genuine endeavour to facilitate healing and reconciliation rather than political propaganda. This was particularly a view I encountered from respondents who voiced criticism about the commission and were also not among the beneficiaries of the reparation. From the limited pool of victims I interviewed and who had received the payment, they were more concerned about the quantity of the payment over the apologies. Nonetheless, the observation still remains relevant because it cannot be assumed that victims' needs are homogenous.

Similarly, the assumption that victims should be contented with the monetary payment as a token of their suffering was not interpreted in the same way by the victims. The victims' concerns were that a reparation programme should adequately reflect and address victims' current needs. Some victims have continued to suffer which they attribute to the violations they encountered. More so, when they compare their current situation with their peers who did not experience the harm they suffered, they feel like they have been unfairly treated. A reparation programme should address that gap and find means of closing it, what one victim referred to as "resettling" them.

"The first question is, what can this person do? Resettle those people. Most of us who even came, we were still young, we had our colleagues, our mates, they were still young, why don't you reassign the person, he do his work?" (Victim)

To place the above in a clearer context, the respondent felt that since his release from detention, he should have been re-employed in the army but instead he was sacked and he went into exile. On his return and after the commission, when it was determined that such violations had been unlawful, he should then have been reinstated which did not happen and he has therefore remained unemployed since. He is now of an age he should be receiving his pensions but this has not happened while his colleagues with whom he joined the forces are enjoying those benefits. In this context, he felt that the NRC and reparation programme did not meet his needs.

In the same way, victims need to be looked at on a case by case basis and a token proportionate to the suffering awarded rather than a uniform rate.

"You need to sit down with the victims themselves. You know every individual, their suffering, their problems. You can know what the nation can do for such a person ... I mean somebody who has spent exile nine years one month, somebody who has spent two years [in prison], you tortured somebody, if I remove my dress and you look at my back, you will be shocked,,, the scars are still there. Then you come and give me [1500] then you give that person 15,000,000,¹² I don't see the fairness. Nine years [and] two years can never be the same. If I look at seventeen years of my life have been cut off ... needs to be looked on a case by case basis."

(Victim)

Of course the official narrative is that the payments were not meant to replace what the person went through but a token of appreciation and acknowledgement. On the contrary, this narrative invalidates the victims' experiences because they see their current situation as a direct consequence of their experience and are keener on a more tangible programme that would seek to correct this imbalance beyond mere tokens and appreciations.

Conclusion

This chapter aimed to give a wider context to the Ghana case considering the gaps in the literature regarding the post-NRC process, particularly in explaining what took place, how it happened and why it happened the way it did.

The context in which Ghana's NRC emerged and operated shows a strong division along political lines. Much as there was a consensus about the need for a mechanism to address past human rights violations and facilitate national reconciliation, the political disagreements that surrounded this discussion remained important to its existence with a strong division between pro and anti-NRC mainly based on the political party one subscribed to. Nevertheless, it is one of the commissions that emerged domestically with considerable input from civil society and the government in terms of funding.

¹² In 2007, the Ghanaian Cedi was devalued by striking off four zeros. There is still reference using the old currency interchangeably with the new, therefore 15,000,000 Cedis is the same as 1500 Cedis

A key refrain from the commission was addressing the past violations to promote healing and reconciliation. As such, its recommendations on reparation drew on this approach and emphasised the purpose of reparation as a tool to provide healing through recognition and acknowledgement of the suffering rather than a pay back of what individuals had lost. It therefore recommended proposals for both monetary awards as well as symbolic, community and social service benefits.

Unlike other cases, it did not propose a framework for implementation but rather in accordance with its mandate submitted its report and the responsibility of instituting a follow up body to the president. A Reparations committee was established that focused on the monetary compensation and as of the time of the field work, other aspects of the reparation programme were still pending.

The recurring issue raised by the respondents was how framing the NRC within a political context derailed the entire process and impacted on its outcome, including the implementation. Some aspects of the reparation proposal plan such as apologies could not be implemented due to the conflicts between the political groups. It was argued for instance that how could the incumbent apologise on behalf of the previous regime when the previous regime that was implicated in many of the atrocities did not even show any remorse for their actions? Furthermore, following a change in government with the implicated regime taking over power, the issue of the NRC seems to have been set aside, particularly since they had maintained their opposition to it from the very beginning.

The interpretation of the process from the perspective of the different respondents reiterates the argument for a holistic approach to studying implementation that takes into account the before, during and post events and attempts to understand the context in which they took place and which specific choices were made. This analysis therefore links the implementation of reparation to the entire lifecycle of the NRC including the factors that determined its establishment, the mandate, the decisions and design of the reparations as well as the socio-political, economic and cultural settings following the NRC.

CHAPTER 9. SIERRA LEONE: IMPROVISING WITH LIMITED RESOURCES

9.0 Introduction

The Sierra Leone TRC recommendations on reparation come across as being comprehensively drafted. The report reflects an awareness of the local realities and attempt to strike a balance between redressing harm and facilitating overall socio-economic development. A progressive aspect to the recommendations was in proposing an implementation framework, structures and potential avenues of funding for the programme. A decade later, the vision of a robust reparation programme has not been realised in exactly the same way it was pictured. Along the way, faced with a number of concerns such as uncertainty of funds and decline of reparation issues from public discourse, the current reparation programme is a shell of what it was intended. Overall, the reparation programme in Sierra Leone is an example in improvisation and an attempt to align the programme as closely as possible to the proposed recommendations.

This chapter presents the results of the empirical study on the implementation of the recommendations on reparation following the SLTRC. This was carried out in Freetown, Sierra Leone from 4 January – 29 January 2011 and 22 October – 18 December 2012. A total of twenty nine open ended formal interviews were carried out. The respondents included the academia, former TRC staff, NaCSA, Civil society organisations, victims and individuals from different ministries. The emphasis was on obtaining expert views on the TRC and post TRC processes resulting in a limited pool of respondents. It structures the discussion under five main themes (1) Operations of the commission (2) Commission's recommendations on reparations (3) Follow-up of recommendations on reparations (4) Implementation of recommendations on reparations, and (5) salient issues arising from the interviews and my observations. Where direct quotes have been applied, they have been used verbatim.

9.1 Operation of the selected truth commissions

For a mechanism that started with a high momentum, the weak responses to its proposals are puzzling. I therefore considered it appropriate to question the attitudes of the respondents towards the truth commission process and whether this could have an impact on the low levels of attention towards its recommendations. In this section,

I consider three aspects, first, whether the respondents considered the truth commission a relevant endeavour on both an individual and societal level. Second, the perception of victimhood. I deliberate on whether the truth commission's classification of victimhood resonates with what the victims perceive themselves as. This is however limited because the scope covered by this study was only limited to the amputees and war wounded. In line with this, I also explore perceptions of victimhood following the limited implementation. Thirdly, I question the expectation that the victims had about the reparation programme and whether these expectations fit within their ideas of what reparation entails.

9.1.1 Necessity of a truth commission

One of the criticism levelled against the truth commission in Sierra Leone was that it was not consonant with local beliefs and practices. The presence of the SCSL also contributed to diminishing the significance of the work of the commission. Some sections of victims such as the amputees were also initially hesitant to participate in the proceedings. As such, I was interested in understanding the attitude towards the setting up of the TRC. Granted that this may be an inquiry coming in at least a decade after the process, I considered it relevant to understanding current attitudes towards the implementation. Could how they perceived it in any way explain the momentum with which it is presently being approached?

A lot of the reflections focused on the need to establish an exhaustive narrative to clarify the events that happened not just during the war but before the war and which created the conditions that led to the war. The narrative would be useful not just for the current generation but future generation as well.

"When our story is told, it is often told in the context of what happened during the eleven years of the civil war but the conditions that basically created the war still needed to be explained. The younger generation needed to know what happened, why did we get to 1991 or how we did we get to 1991 ... [it needed to be explained] in an impartial, objective and a sort of nonpartisan way" (CSO).

In general, it was understood that the war did not just happen spontaneously but was a culmination of injustices that had been perpetuated over time through successive regimes. It was important that these injustices not be repeated. It was also equally

important to know what these circumstances were and to make both the current and future generations aware of the divisive and problematic past so that the mistakes do not recur. For this, the truth commission was considered an effective tool in establishing an impartial, objective and nonpartisan narrative of what happened. Informal discussions with various sections of society also confirmed this view of the understanding of truth commissions as a tool to facilitate knowing the country's past and keeping that memory alive through the public testimonies, media publicising and the report in its various disseminated versions.

On a more specific level, I encountered a difference in the way various individuals related to the truth commission experience. From the elite, there appeared to be a better understanding of the TRC and its limits. It was considered a "necessary" venture because of the complexities experienced during the conflict. They for instance highlighted the flexibility and limited number of alternative mechanisms available.

"There are several ways of seeking justice ... if truth commissions are able to do an effective work, I think they would go a long way towards healing the wounds from the war ... practical aspects like the cost hinder formal justice systems" (University professor).

These categories of respondents pointed out that the war was complex and therefore necessitated a creative approach for accountability.

"This was a civil war, it was also complex where you could find members from the same family belonging to different camps ... you could have one who would be a member of the Civil Defence Force, another who would be a rebel or sobel and in situations like these, it becomes difficult who to punish and what form of punishment without creating further problems" (University professor).

What is interesting is that during this transitional period, there was an influx of civil society organisations, many of them disseminating transitional justice information, particularly on truth commissions. The rhetoric employed by these sections of respondents is quite similar to the advocacy literature on transitional justice which in a way points to the impact and success of sensitisation activities in popularising the TJ framework for post conflict recovery.

Among the non-elite, the purpose and work of the TRC was largely misunderstood. One of the respondents, a member of a CSO speculated whether it wouldn't have been more

appropriate to pursue a less formal mechanism than the commission to try and connect with and appeal to who he referred to as a largely illiterate population. Such a mechanism would have been more compatible with local beliefs and systems.

One of the sources of the misunderstanding of the mandate of the truth commission was the DDR programme. A number of the respondents pointed out that the common understanding was that once the combatants had been taken care of through the DDR programme, the attention would then be turned to the victims through the TRC.

The TRC therefore tended to be viewed as a body designed to take care of the victims. The proposed reparation programme was particularly reflecting the DDR packages.

“If we did not get the reparation programme, the victims will remain to suffer for life. Because we had addressed the needs of the perpetrators in their programme and those [victims] who had lost part of their own livelihood in terms of any part of their body ... that’s why we have those reparation programmes” (Former TRC staff).

It is this same rhetoric that was employed to the victims during the sensitisation campaigns. The TRC was presented as a mechanism that would benefit the victims both emotionally, by telling their story but also as a future reference to demand for their benefits.

“There is a reason that we would participate in the TRC because of the fact that that could be a document that we would be able to fight the government in due course if they fail to implement the reparations process” (Amputee victim).

Following this discussion, I construe that despite the misunderstanding regarding the purpose of the commission as a tool for the victims as the DDR was for perpetrators, the TRC was generally considered a necessary mechanism for understanding the complexity of the conflict as well as an instrument that could be employed in the future for holding government accountable for providing the necessary redress.

9.1.2 Victimhood

The commission in their report was quite specific on whom they considered victims and who was eligible for the specific measures of the reparations programme (TRC report Vol 2, 2004:243). From the interviews however, I found a more dynamic

conceptualisation of victimhood. Of course many of the respondents agreed with the commission's discourse that all Sierra Leoneans are victims both directly and indirectly and for the need for extra assistance to certain groups who suffered more harm and continued to face numerous hardships such as the amputees who *"have been deformed for life, they cannot fend for themselves ... [such] cases do not require debate"* (University Professor). Such categories would best benefit from a strategy that employs long term assistance.

A number of individuals also felt that they had been left out in the categorisation of victims to benefit from the specific measures of the reparation programme. In Freetown during the war, many took on the burden of caring financially and materially for their relatives who were in the countryside and were therefore the primary source of resources for their family and relations in the provinces.

Another case was those who suffered material or property losses but did not experience physical harm on their bodies.

"There are many victims, they are identified because of their physical disability. Those who were never, I was never, nobody chopped my fingers off, my house got burnt, if I wasn't so skilful, I would have died!" (Victim not categorised as vulnerable).

A number of the victims felt that they should have been included in a reparation programme because they experienced losses as well and have since failed to recover and there are no other options available to them.

"I was badly affected because number one it [the war] devastated my life. This way, I was a working gentleman, when the war came to Freetown, all my livelihood went away, they took it away from me ... my house was burned down, the evidence is still there black with smoke. It has not yet been reconstructed ... People were killed right in front of my eyes. That's something I was unable to contain. The trauma, any time I remember that I just feel bad about life. The life I cannot make, somebody taking it away just like that. I'm devastated, straightforward, let me be frank." (Victim not categorised as vulnerable)

9.1.3 Continued suffering of the victims

Eight years after the TRC, a number of victims are still carrying the wounds from the war. Despite the advocacy of the forgiveness discourse, many of the victims bear physical reminders of the war as described by one amputee.

“As for me, I told them, I will forgive but I cannot forget because this thing [amputation] is part of me now. This is not a house that being burnt today they will rebuild tomorrow. This is forever, so I cannot forget. Whenever I do this [lifts up arm stump], I see it.” (Amputee victim)

He further goes on to describe some of the psychological distress such as nightmares and terrors.

“At times, something like a nightmare comes to me because when I saw the, when I think over the man who was doing the action, I remember when he took that big axe, when it goes over my head, ‘put your hand down, hold your hand, I’ll blow your head off’, then it was amputated forcefully, whenever that comes in me, if I’m home, I just lay down and perhaps sleep.” (Amputee victim)

A number of victims have remained visible, such as the amputees and war wounded. Immediately after the war, amputee camps were established and later, the amputees were relocated to amputee camps in several locations around the country. A number of them have however resorted to begging on the streets. Other groups of victims however are hardly seen either voluntarily or have outgrown the category such as children.

From the discussions, three key priorities stood out for the victims: educating their children, access to health care and livelihood support. They argued that despite the introduction of free primary education in 2003, there are still multiple and prohibitive hidden costs such as for stationery, uniforms, school feeding, transportation, extra classes. They also mentioned that a number of the government schools in which the free education is offered are of poor standards and yet they cannot afford the private schools. Their children are therefore unfairly disadvantaged because even when they are able to go to school, it is of poor quality. The future they foresee for their children is not very bright. They of course directly link this inability to provide quality education for their children to their disability and inability to make a decent living. The Chairman of the AWWA continuously emphasised the negative consequences from witnessing

the helplessness of their parents as a budding resentment which could make them *“another rebel tomorrow.”* If the amputees do live long enough to see their children into adulthood, there is also no guarantee the children will be able to take care of them because they have not been able to provide a foundation to build a successive life for them as expounded on by the Chairman below,

“If they are educated, then they will forget about their father’s plight. Some of them will be able to take care of their families as it is our tradition. We don’t have welfare but that’s why you work hard for your child to go to school, that he should help you.” (Amputee victim)

Access to health care for both themselves and their families was also of concern to the victims. They reported that when they get sick, they cannot afford to access the care in the hospitals.

Many of the amputees stated that they rely on begging and handouts. It is a well-known issue in Freetown for the amputees to move from shop to shop or street to street begging. When they enter a business establishment, the first reaction is to let them know that there is nothing to be given as described by one amputee,

“It really touches me when I want to buy something in the street, whenever I go to the shop, they will say, ‘ah nuttin no dey’ because they are all branding us that we are the same, I want to beg to the shop. Oh this always pains me. Yeah, at one time I want to buy, I go to one shop to buy a flask, as the shop boy saw me, ‘eh nuttin no deya papa’ then I said, ‘you stupid nonsense man, do you think that I come to beg here?’ They are used to seeing these people begging, I said but I can’t blame you, I say it’s ourselves.” (Amputee victim)

While talking with the amputees and war wounded, I made inquiries into what they were engaged in before the amputation. Their professions ranged from student, to petty trade, farming and vocational employment such as car mechanic. Whereas it was difficult to verify the accuracy of their claims, it was obvious that many of them have not been able to engage in income generating ventures after the amputation. There were some exceptions such as the President of the AWWA who turned to photography from car mechanics after his amputation. A few engage in petty trade but the majority do not have a clear source of income or been able to go back to what they were doing. Even for those who are engaged in an activity, the proceeds are barely enough to scrap by.

They also believe that this atrocity that was committed against them is through no act of theirs and so they should be entitled to a livelihood support, what was being referred to as “social security” or “welfare”. They even argued that since the perpetrators were already receiving similar packages despite their involvement in the war, it is only fair that they as victims should be afforded the same consideration. By 2012, there was talk of a proposed monthly package of Le 250,000 (€ 52) for the amputees, a figure the President of the AWWA deemed too low considering that “a bag of rice is over 150,000, mind you a father having or a mother having 4 or 5 children.” He was also opposed to the exclusion of the severely war wounded on the grounds that despite them not having lost full limbs as per the classification in the TRC report, they were also in similar conditions, many of them unable to engage in gainful employment. During the interview, he called over a staff member, employed as the receptionist at AWWA who is classified as a war wounded because it is only the fingers that were amputated and exclaimed, “Is this man not vulnerable? He is vulnerable!” The chairman was therefore advocating for at least a minimum of Le 450,000 (€ 93) per month for both the amputees and the severely war wounded.

9.1.4 Abandonment

The respondents I interviewed expressed a sense of feeling abandoned by both the society and the government.

“We get our problems here, they don’t even care ... let me say, the welfare of the war victim is much mishandled.” (Amputee victim)

Many of the amputees and war wounded are suffering from medical complications arising out of their injuries and are unable to access medical care, either because of the prohibitive costs or because they do not trust the medical system and the government at all. There is a perception that they are deliberately being killed in order to get rid of them.

“When we go to the hospital, these people want to finish us, what I am going to ask for is hard cash. We’ll find out own doctors. They will give us slow injection for us to die ... we go one by one quickly. We were going one by one some every two months, but when we go for free medical care now, they’ll kill us in fives.” (Amputee victim)

The assumption is that when they are all dead, then the government will be free from its responsibility to provide reparation.

Houses were constructed in resettlement camps for the amputees and war wounded, however, the location of these houses also fuelled the sense of abandonment. Many of them are located far away from Freetown and it is difficult to travel to and from the camps with public transportation. They argue that getting them out of the city centre reduces their visibility which will make people forget about them. Many people have moved beyond the war and the amputees are some of the reminders of that period who are being erased.

9.1.5 False expectations of what the TRC can provide

When the TRC was in the process of carrying out its activities, some of the victims expected some sort of tangible benefit either in exchange for their testimony or for appearing before it. That did not happen because it was not in the mandate of the TRC to award benefits, although according to the former Commissioner, they did avail counselling and psychological services to the victims who were in need of it when they came in to give their testimonies.

On another level, it also emerged that many of the victims felt that the truth commission limited itself and its influence by failing to incorporate aspects of traditional healing and reconciliation mechanisms in its procedures. For instance, one respondent pointed out that,

“although it [TRC] recognised the importance of rituals in the whole healing process, I mean traditional ceremonies, they were not effectively made use of, you know, either because they [the commissioners] did not strongly believe in them because of the background of the commissioners ... that was not fully utilised which in my view was a serious problem, omission on the part of the TRC ... because these ceremonies like all others have their shortcomings but they also play an important role in the lives of the ordinary people.” (University professor)

Despite the sensitisation campaigns, there was a false understanding of the capabilities of the TRC. In reality, the TRC is only guided by its terms of reference which is clearly spelt out in the mandate. The narrow focus of the mandate has also been pointed out, particularly its temporal scope. The Act for instance calls on it to investigate abuses

from 1991 but as shown in the report as well as by respondents, “*the seeds [of the conflict] had been sown long before that [1991].*” (University professor). They argue that the legacy of structural violence that has characterised the socio-political environment stretches as far back as 1961, the time of independence. The commission even stretches it as far back as the resettlement of former slaves and colonial experience.

There may be criticisms against the TRC for instance about its composition, operations, reach, mandate, output among others but what stands out is that it was a tool that was widely known. However, the specifics about its work and its relationship with other mechanisms may not have been clear. During its operations and shortly after it ended, it received a lot of attention. The report was widely disseminated in different versions both online and in hard copy. The Open Society Institute for West Africa (OSIWA) made it possible to host an online archive of the report and other supporting documentation. Through the website, one can access the final report as well as the secondary school version and TRC report for children. WITNESS also supported the production of a video summary of the report summarizing the key findings and recommendations. A music CD, was also produced with the assistance from United Nations Integrated Office in Sierra Leone (UNIOSIL). It comprises of catchy renditions of the findings and recommendations, sang by local artists in *Krio*.

This contextual analysis establishes that the TRC was not some obscure mechanisms but rather well known and popularised.

9.2 Recommendations on Reparation

The recommendations on reparation were generally viewed as significant for acknowledging the victims’ suffering, giving them the recognition as victims and for helping them to cope with their deprived livelihoods, summed up as giving them a “*sense of closure and justice.*” (CSO)

It was however continuously pointed out that the potential of reparations to benefit the victims and the entire nation has not really been realised because of the inefficient and ineffective reparation programme so far. What has however not been disputed has been the content of the specific measures of the reparation programme which has been viewed as a holistic approach to meeting the social and economic needs of the victim.

9.2.1 Content of the specific recommendation for reparation

The basis of the reparation package comprised of facilitating access to specific services such as health, education, and housing among others. The commission argued that this would enhance accessibility for an already disadvantaged group. Respondents often pointed out that the war and the trauma from the war created severe disadvantages for some categories of individuals therefore, such a package addresses the socio-economic needs of these victims.

Some other respondents also argued that it should not be the commission to tell the government to provide such services as these are facilities that government should provide irrespective of the situation. However, in contexts such as in Sierra Leone, these services are already either lacking or in a poor state and while emerging out of the war situation, the government is faced with the pressure to develop these services. By incorporating or modifying reparation programmes to fit within the development agenda, it would not only facilitate the victims into accessing these services but also contribute to the overall development programme, thereby hitting two birds with one stone.

Given the high rate of non-implementation however, I was interested in whether the recommendations were considered too ambitious. In all of the discussions, none of the participants deemed it an outrageous set of recommendations and even considered it to be quite modest.

9.3 Frameworks for following-up reparation

The commission proposed a detailed framework for the implementation of the recommendations on reparation (see 6.3.8). This included an oversight body, implementing body as well as specific line ministries in whose jurisdiction a recommended service was proposed. It also detailed potential sources of funding for the victims fund.

9.3.1 Follow-up frameworks

Below is a discussion of the follow-up frameworks and the perspective of the respondents concerning the frameworks.

National Commission for Social Action (NaCSA)

According to a NaCSA staff member, NaCSA as an implementing agency is guided by the terms of reference drafted in the TRC report. NaCSA was initially set up as a government agency to facilitate the delivery of social services. It had also been involved in the post-conflict reconstruction, resettlement and rehabilitation services. NaCSA's facilities extended all the way to the local level at the chiefdoms which made it a well-known agency with experience in service delivery. It also coordinated the DDR programme in its previous mandate which broadened its experience. The commission therefore recommended that NaCSA coordinates and implements the reparation programme in addition to administering the special fund for war victims.

On the whole, the respondents agreed with the strategy of commissioning an existing agency that had experience interacting at the grassroots. According to them, NaCSA had the potential to register a wider impact on the implementation of the recommendations because of its reputation. It was already well known.

Assigning the implementing responsibility to NaCSA, an already existing body had its merits, the most obvious being that it was already facilitating similar delivery of services and facilities in the context of general reconstruction.

There were however doubts as to whether NaCSA was able to meet the requirements necessary for facilitating a reparation programme. One of the respondents pointed out that the context in which NaCSA operates is different from a reparations programme.

"NaCSA is more of a social delivery mechanism than the human rights thing, you know, they are more interested in providing social ... engaged in putting up structures, you know, community structures, could be a school, it could be a market, it could be a community centre, you know, those kinds of things." (University professor)

Issues of accountability were also of concern, particularly regarding the lines of responsibility. One respondent pointed out that there are not very clear monitoring and evaluation mechanisms by raising the question of *"Who is monitoring NaCSA?"* In discussion with NaCSA, there did not seem to be a robust structured monitoring and evaluation mechanism specific to the reparation programme. When I inquired about reports, published or otherwise, the respondent who was a staff at NaCSA deferred the request to a later date so he could get permission from higher up but he did promise to

avail the exact figures of victims and beneficiaries. In the end I did not get any of the reports although the figures of the victims and beneficiaries was read out to me. This is contrary to the TRC report which called for NaCSA to produce annual reports and financial status of the fund (TRC Report Volume 2, 2004:269).

In terms of monitoring the NaCSA activities, the impression I got was that NaCSA has worked closely with government as there was a strong emphasis on the regular meetings they have at different levels at the ministries, parliament and president's office and through these meetings have apprised the relevant bodies on their activities. However, the scepticism over being accountable to the government was raised during the interviews.

"The government is not the best agency to do that [monitoring]. This should have been done by some non-governmental thing, you know, council of elders, you name it or you know, who do not have any direct interest in politics, you know, to ensure that these things work well."
(University professor)

NaCSA's internal structure has also been a cause of concern, particularly what one respondent referred to as the *politicising* of issues. It was assumed that the changes in government and its priorities had an impact on the composition of the staff at NaCSA dealing with reparations.

"NaCSA management, every senior person there was gotten rid of, because they felt that on one way or another they had been associated with the past regime." (University professor)

The implication, particularly at NaCSA was that there was a new team that was criticised for not having been involved from the beginning with the reparation issues and were not able to fully grasp the context and subtleties of the reparation programme.

Human Rights Commission

The commission recommended that the Human Rights Commission serves as an advisory body (TRC report Volume 2, 2004:193). This is in addition to its role in monitoring and facilitating the implementation of all the recommendations made by the TRC (p.205). By the time of writing the TRC Commission report, a commission on

human rights was still non-existent. The commission was eventually created in August 2004 and as seen from the said recommendations, was already clearly overwhelmed.

Operation-wise, it has focused more on the general human rights situation for what they are mandated over reparation which has remained a small component of their overall programmes.

“Well the Human Rights Commission is there and they have been publishing. They have been producing annual reports where they more or less monitor and give reports of human rights situation in the country including abuses and improvement.” (University professor)

Nevertheless, it established a Reparations Desk Officer and has collaborated with NaCSA on a number of issues regarding the reparations such as seeking for resources and sensitisation campaigns. Overall, the involvement of the human rights commission has remained minimal.

Civil Society Organisations

The commission recommended at least four representatives of CSOs, two of which should represent women and youth, be included in the follow-up committee. This requirement was however in reference to the whole range of recommendations and not specific only to reparations (TRC report volume 2, 2004:205).

According to some of the respondents from civil society, a TRC working group that included NGOs was formed to coordinate the implementation of the recommendations. They were however not clear on the exact composition and the respondents pointed out that the group gradually lost interest in the entire process. Each organisation came with its own interests and focused on aspects within the recommendations that were in line with their organisation focus.

Specific to reparations, two representatives from two NGOs were nominated to represent the CSOs and work with the reparation committee. There has however been minimal coordination in debriefing the rest. The CSO members I interviewed expressed their disappointment in this shortcoming.

“Since they went in that committee, we have been running after them for our copies [of the report], no meeting, I personally have been running after them for a meeting, no meeting and these are your colleagues, what

do you want, we can't meet them, they are very busy, their number is off, so it's like a whole mess." (CSO)

The proposed structure for following up on the implementation of the recommendations may have been a step in the right direction. However the practical aspects of it may have been overwhelming. In general there has not been much of a systematic and structured mechanism to keep track of the whole process.

9.4 Implementation of the recommendations on reparation

The status of the reparation programme has not really met the expectations of what was proposed by the TRC. *"Messy"* was the most common adjective the discussants used to describe the implementation. In general, the implementation has suffered several hiccups along the way. From a failure to set it rolling to inability to attract funds to a haphazard start roughly four years after the end of the truth commission. One of the respondents described the Sierra Leone process as such,

"You're researching, you find a very beautiful baby standing here, well dressed, that is the report and when you read that report you go back and say oh wonderful things we have here. You come on the ground that is your downfall." (Former commissioner)

This description appropriately describes my experience and dilemma in attempting to unravel the proceedings of the implementation process. I met a lot of dead ends along the way, particularly with the respective ministries mentioned in the report and in the end discerned that a lot of the elaborate structure was actually toned down and centred round NaCSA. This was also reiterated by a number of the respondents who constantly referred me to NaCSA because they are *"in charge of the reparations."*

9.4.1 Understanding of implementation

First, I wanted to make sure that when I asked about implementation, both the respondent and I were referring to the same thing. Implementation according to the respondents was interpreted as the act of transforming the proposals into actions that they were intended to produce. For a number of respondents, it did not matter who the actors that facilitated this change were as long as the end product is observed. This definition was necessary to get beforehand because a number of the actions that were

recommended by the commission during the course of time have been taken on by NGOs and so when reference is made to implementation, it encompasses a wide range of actors.

Nevertheless, there is an awareness by the respondents, particularly the victims that the primary responsibility for implementation lies with the government. The prevailing view therefore is that government has not made any effort and has in fact been reluctant to implement the recommendations on reparation. When I asked about what they thought of the implementation process, I got variations of *“nothing has been implemented!”*

The majority of the respondents argued that reparation was not being viewed as a priority by both the government and international organisations. For instance, even with Sierra Leone’s inclusion on the Peace Building Commission agenda, reparations was not part of the programme. I reviewed the Sierra Leone Peacebuilding Cooperation Framework and it indeed shows that the issue of reparations as an item did not feature in the agreement. There was reference to the general TRC recommendations under the justice and security sector reform. The framework proposed that the implementation of the TRC recommendations be used as a strategy to raise the populations’ confidence in the justice system and ensure timely and equal access to justice (Peace Building Commission, 2007:5, 9).

Coincidentally, the peacebuilding cooperation set up occurred during the period close to the 2007 elections where the APC won the elections. The agenda of the cooperation leans heavily towards general peacebuilding efforts which has been argued by some respondents was intended to consolidate the image of the APC over a wider electorate than a specific group.

“A peacebuilding commission was set up in 2007, just before elections and they had their own priorities. These people came and initially you know, they too they had their own priorities and when they came, this was in consult with the UN, the peacebuilding commission, when they came, their initial interest was in energy, providing electricity for Freetown and a substantial amount of the peacebuilding fund was used initially for that you know.” (University professor)

The energy sector was only one of the six priority areas but it did stand out to the extent that many of the respondents associated it most with the peace building commission.

A number of the times, the reparation efforts were compared with the DDR and special court with the resultant observation being that a great amount of funds had been injected into the DDR and yet reparation efforts in total would cost much less than what the other programmes cost.

“What is required for the reparation programme is just a fraction of what was spent on DDR ... and I think a third of what is being spent on the special court would go a long way in implementing all these recommendations of the truth and reconciliation commission, just a third of what is being spent.” (CSO)

The general perception was that reparations were not considered as a priority area for implementation both internally and from the international partners. Locally, whereas there was a high level of appreciation for the justice component provided for by the special court, it was argued that sometimes justice needs to be felt in more tangible forms.

“I think given the option for some, given the option between the special court and the reparation programme, much as they would still want the special court to be there, but if they had to choose between the two, I think they would not have found that a difficult decision to make.” (CSO)

My observation was that implementation tended to be linked with foreign assistance which is known to be earmarked for specific target programmes that comply with donor specification over local needs. A lot of this aid evolved from funding Transitional Justice efforts notably DDR, Truth Commission, SCSL and to an extent reconciliation exercises and then switched to reconstruction efforts such as institutions and physical infrastructure

9.4.2 Actors in the TRC and Reparation process

At different stages of the TRC process, there have been changes in composition of participants. One respondent for instance pointed out that many of those who were actively involved in developing the TRC were not able to, for one reason or another continue with their involvement.

During the signing of the Lomé peace agreement for instance, the main actors were the government and rebel groups. Civil society and victims were not directly involved in

the actual negotiations. They were already side-lined from proceedings and were more or less props facilitating the process.

"We as civil society members were there [Lomé agreement signing] to build up the confidence between the two parties, the government delegation and the rebel delegation. We were not directly involved in the actual negotiation. There was a lot of hostility and suspicion initially and part of our job really was to break the ice as it were So they could start to build up confidence." (CSO)

This is quite contrary to the perception portrayed in the literature about the active involvement of the civil society in the peace negotiation process. They were present for the meetings but as deduced from the interviews, this participation was more superficial and they did not participate in the core of the negotiations. For instance, on asking about their opinion on the direction that the TRC took, one respondent pointed out that they had to operate within a framework which had already been decided upon.

"When we were involved to do the preparatory work after the Act had been passed so we had to operate within that framework [of the Act] unfortunately ... we were not involved in for instance writing out the objectives of the commission, what it could do, we only came in to do the spade work, prepare the ground for the commissioners, do some background research for them you know, but we came in after the Act had been passed." [University professor]

Some of the respondents argued that the TRC could have been organised differently. They particularly pointed out that it did not reflect local realities and expectations. For instance, they felt that some aspects of traditional peace building mechanisms needed to have been incorporated in the workings of the TRC which could have increase the acceptance of the TRC among the local communities.

The secondary role civil society played meant that they could only be involved at particular times for specific activities such as sensitisation. This role was carried out in addition to the organisation's regular programmes. Therefore, when their need in the TRC was exhausted, they moved back to their core activities for which they were assured of regular funding.

Similarly, a section of respondents were of the view that the TRC did not manage to attract powerful actors, specifically, notable perpetrators like the Special Court did and

this likely hampered its effect. Some of the victims I interviewed acknowledged that they were able to face the individuals who had harmed them. The perpetrators asked for forgiveness but it did not really matter because their situation has not changed but became even worse due to their daily needs not being met. More so, the high profile perpetrators whom many of the victims were eager to see appear before the commission such as Norman Hinga were not able to, either because they were not willing to or because of operational complications between the TRC and the Special court.

From the discussions, it appeared that the role of the different actors was something that was not clear-cut. The significance of the participation of the various actors, particularly the civil society was definitely acknowledged however, in practice, it was less vibrant. The civil society is survival-driven and therefore engages in activities that will ensure its future existence.

Another issue that was raised particularly in the implementation aspect was the replacement of actors. New individuals who had not been involved from the beginning were appointed and the perception was that these new individuals were not as attached and knowledgeable in the interests of the commission as the original members. Following the securing of funds, one respondent felt that he and some of the key members became side-lined.

"I was put on that initial committee to prepare the initial papers for the reparations programme. It's in the committee stage, in the thinking and processing of what was required and what was not required, what should [be] eliminate[d] from this and what should benefit from this, I was there, but as soon as the funding came, we were put in the back warmer, we do not know what was happening, up to this day I don't know what is happening" (University professor).

The effect of not involving the same persons is that they lose out on the insights that went into constructing a particular programme up to the level that it is at, a term one of the respondents referred to as 'institutional memory.'

"Getting new people on board, what happened with that? And it became disastrous. All of those who prepared the reparations programme paper from the committee stage to the implementation stage, when the government came on board they dropped off all these people and put in new people so there is no institutional memory. That is a bigger hiccup.

No institutional memory, those who were there, holding the nitty gritty from that paper point to the implementation point they are not there, some of these are coming they claim they know, they go and read the TRC report but the TRC report is just a paragraph.” (Former TRC staff).

The employment of new individuals to take over the implementation process was viewed as coming at a cost because many of the new individuals and organisations were considered inexperienced in terms of not being aware of the background complexities that were involved in setting up the programme.

9.4.3 Irregularities in registration

One of the initial activities carried out by NaCSA following the release of the peace building fund was the registration of victims. However, a number of respondents observed that the process that was used to register and distribute the money was flawed and as such a number of unintended beneficiaries were absorbed. They claim that some of the victims got their injuries in circumstances outside of or not related to the war but were able to manipulate the process and gain inclusion.

“The great mistake was this, during the registration of war victims, it was on the radio, it was said every war victim should come and register for such money. I can tell you that the non-victims, that were victims amputated before the war, where are they today? All have been absorbed to the war victims, they are all taking part... there were people who were accidentally, got accident by car, or those that fell from palm trees, those that fell from mango trees, all are now inside the war victims.” (Amputee victim)

Although this claim could not be substantiated, these perceptions of irregularity continue to dog the process making it difficult to develop trust between the various parties. It was expressed that the verification process was not vigilant enough and it could have been made more secure by involving the victims’ association.

“We [Sierra Leone Amputees and War Wounded Association] should have [been] involved in this registration, because we know the questions that we can ask ... we were already in place.” (Chairman, AWWA)

The questions for instance revolve around the context of their injury for example hospitalisation stays, documentation and alibis such as individuals who shared the

same experiences of amputation, hospitalisation or living in the IDP camps for the amputees.

Against the background of this suspicion, there have been calls for the verification of the current amputees and other war wounded through a process that should involve the victims as well.

"I highly commend NaCSA for the work so far but I would like to inform them that they need to verify most of the amputees that they registered ... We should involve in on verification (sic). We know ourselves. We have certain questions which we will ask any disabled person who says it's the war." (Chairman, AWWA)

However, the verification is a process that is unlikely to happen. The president of the AWWA claims that all they are receiving are promises of being involved in the verification exercise but no real effort towards making it happen.

"So they, they are promising me but they don't want to do that 'eh eh Eddy, we are going all over the country so that we can do fresh registration but they are just dragging it, dragging it so I am putting it on them that we should do this verification." (Chairman, AWWA)

Another flaw in the registration process highlighted by the victims was the deliberate manipulation of the registration process by authoritative figures within the victims' association to include family members who normally would not be eligible for the payments such as wives and children.

"Ok, he [name withheld] registered his wife, five children plus himself, that makes to seven while we only as the family heads received that money, not our wives, not our children, not our other dependants, so that's all the massive corruption on that reparation. This was not for family members." [Amputee victim]

The extent to which this was a standard practice or speculation could not be verified but such assumptions heightened the mistrust in the institutions involved in the implementation process.

9.4.4 Role of civil society

Several civil society groups were actively involved in the initial reparation process. They formed a steering committee to work with NaCSA. A number of them picked up issues that had been recommended by the commission such as health care and education services to advocate for. An Amnesty International Sierra Leone staff for instance revealed that they came to be involved with NaCSA because of the work they were doing on reporting on victims of sexual violence and so were instrumental in proposing frameworks to address this issue in the reparation agenda.

NaCSA has also highlighted the key role played by these organisations in the reparation exercise once the initial process had taken off. This was in the area of sensitisation in terms of what benefits were to be disbursed and how it would be done in order to manage expectations. They involved organisations that were based at the local district levels and therefore had access to minority groups.

According to NaCSA, in the implementation of symbolic reparation, various local organisations were also resourceful partners in facilitating these processes in collaboration with the local communities. NaCSA involved local organisations working directly with the communities in organising and implementing the commemoration and memorial activities. According to NaCSA, they simply facilitated in terms of providing them with the resources.

My observation was that unfortunately the support from the civil society has not been sustained. From the discussions, in comparison to how galvanised they were prior to and during the commission, particularly spearheading the needs of victims and acting as their mouthpiece, such support in coming together as civil society and making victims' reparation a major advocacy issue has been lacking.

The number and the composition of the victims has also not enabled the victims to have a voice that can direct the political leadership into action. Many of them are poor and concerned about basic needs like food. Begging is a common occupation of particularly the amputees. They are also less visible as they have been moved out of the centre of Freetown to the outskirts in settlements. Getting to and from these locations can be difficult as I experienced during my visit to Waterloo and Grafton settlements. Grafton, for example is about 22km outside Freetown. Besides the prohibitive costs, for a victim, one needs to navigate the challenging public transport system which sometimes discriminates against people with a disability and many of these persons need wheel chairs or other mobility aid. A lot of structural and economic issues inhibit victim's

participation and activism and many of them are more concerned with survival and as such, they need to be empowered and bolstered by the civil society.

9.4.5 An implementation matrix in Sierra Leone

The TRC in Sierra Leone made detailed recommendations on specific measures for reparation, including specific beneficiaries, benefits and a time frame. The implementation process has however not been as meticulous as the proposals. Two major observations stand out in this; one, the shift from primarily service oriented benefits to monetary awards and secondly, a lot of the services which were contained within the reparation recommendations have been carried out by NGOs. These NGOs have mainly worked with the approval of the government but my concern lay on whether these can be considered as reparation fulfilled or do they remain as development assistance irrespective of the fact that they primarily targeted the categories identified by the TRC as beneficiaries of the reparation programme. In this section, I present an overview of these programmes reflected against what the reparation programme had intended.

According to NaCSA, in 2007, the UNPBF provided funds amounting to USD 3,000,000 to set up the reparations programme. This included putting up the relevant structures, registering victims and dispensing benefits.

A reparation unit was created within NaCSA and by September 2008, it became operational. They were however only able to fully access the funds in early 2009. From 2009, they started working out the modalities with the ministries for the implementation programme. The main challenge of this fund was that it was intended for a one year programme and there was no guarantee of a renewal or a sustained contribution from the funding agency.

The TRC had recommended for NaCSA to maintain a supervisory role however, following the receipt of funds, NaCSA was involved in directly implementing the programmes. They were aware of this issue as seen in the response by a NaCSA official.

“Of course, some of the recommendations were not to be implemented by NaCSA directly. We are to work with government agencies, government ministries and other departments in the implementation of these recommendations and these require planning.” (NaCSA)

On inquiry into the modification of this mandate I got a mixture of responses all relating to the conditions of the initial funding. First, the money was specifically directed at NaCSA and tied to specific activities. NaCSA was therefore not in a position to use it in such a way as to follow the reparations schedule as designed by the commission.

Second, the process of setting up a fully-fledged reparations scheme as proposed by the commission necessitated more resources than what was provided.

Third, a number of the recommendations required collaborating with other ministries, departments and agencies. This would require coordination and time to work out the modalities of cooperation.

"We need to have meetings ... we need to see what policies are already in place? Know what are the policies in place that are relevant to these recommendations so you will not, you are not like reinventing the wheel and you will not duplicate for example, if you do not try to know policies in place, you will not know for example that there is a government policy of free primary education so you will in planning your programme will make provision for tuition fees when in fact this is already covered by the existing policy ... you need to plan properly, you need to have meetings with other partners, the other partners are going to help you in implementation of the programme ... you need to have meetings on and off, you need to identify the gaps, you need to know how they can be addressed, what will be the role of the implementing agency, that's NaCSA, what will be the role of the ministry, then you agree upon something, procedure for the victims to access these services that are being recommended through these ministries." (NaCSA)

When the initial funding was provided, NaCSA had to make a decision within the limits of the funding condition on how to carry out a programme. There were a number of concerns expressed such as the victims who were still waiting for their benefits, stakeholders that needed to be on board and the funds provided was barely enough to roll out a programme as envisioned by the commission.

"So you see my point now? We have a programme, we need to plan with the implementing partners. The victims are out there. They are in urgent need of these services so we decided that yes, we can go ahead with the planning but we can also come up with measures to respond to the needs of these victims which would be consistent with the services that they are

to be provided with ... when we are going to end these discussions? When we are going to have the modalities? We don't know." (NaCSA)

In line with this thinking, NaCSA came up with three measures: urgent interim reparation, symbolic measures and emergency medical assistance. These measures were infused into the original reparation proposal such that some aspects of the reparation were implemented as shown below.

9.4.5.1 Physical Health care

The outcome of the recommendations on health accessibility did not turn out as had been envisioned by the commission. Below is a recap of the recommendations on health benefits:

- Free physical health care for victims and their families to the degree of injury and strengthening referral systems between primary health units, district hospitals and tertiary care units
- Provision of free prosthetic and orthotic devices, coordinating access to organisations that provide such devices and provide incentives and facilitate the training of prosthetic and orthotic technicians
- Free rehabilitation, physiotherapy and occupational therapy. In the short term assist existing organisations and in the long term establish such centres; support the implementation of community based-rehabilitation activities and offer incentives to attract therapists.
- Establishment of specialised centres such a Fistula Repair and Training Centre
- Support for scar removal services for branded children
- Mental health care including counselling and psychosocial support and assisting programmes that provide trauma counselling

9.4.5.1.1 An Alternative strategy: emergency medical assistance

Health concerns remained a priority for the victims. Health benefits have been very limited and access to health is still critical among the demands from the victims. The death rates were also alarming. The chairman of the AWWA for instance mentioned that in the period of August to September 2012, a total of eight amputees had died due to health complications.

When the grant from the peacebuilding fund was made available, addressing the health needs was therefore an urgent concern. The reality however was that it could not be enough to roll out the extensive, long term health services as recommended. NaCSA instead focused on what it termed as the emergency medical assistance. This was in response to the number of victims who had life threatening physical conditions as a result of the war. A NaCSA official cited one case of an individual who had been living with a bullet close to his heart and had been unable to access the necessary services for the removal of the bullet. A number of them had bullets lodged in their bodies for up to a decade. Below are the activities and services that have been carried out and/or provided in the framework of health benefits.

Reconstruction surgeries and scar removal

According to NaCSA, besides the bullet wound cases, a number of them also had debilitating wounds or injuries or had been victims of sexual violence and incurred physical injuries such as fistulas. So the emergency medical assistance was in effect designed to address these emergencies.

“The emergency medical assistance. This was actually designed to respond to the needs of the victims who were in a critical condition and in need of urgent medical attention. Those who could not wait until the mainstream health policy is rolled out ... they could not wait until we plan with them, until they communicate to their district offices, until we arrive at something for them to access the services, so we say even whilst we are planning with the ministry of health, since one of the benefits recommended for them was health benefits, let us see those who are in urgent need of health benefits, access this service while we plan with them.” (NaCSA official)

In total, 49 victims had surgeries to repair serious injuries, either bullet related or otherwise. 235 victims of sexual violence were also identified and treated according to their injuries. The Aberdeen West Africa Fistula Foundation (AWAFF), a programme supported by Mercy Ship carried out the surgeries. Marie Stoppes, another medical organisation also provided non-surgical gynaecological services to other victims who were experiencing gynaecological related issues.

Comparing the total number of victims (32,110) to the ones who were able to receive the emergency medical assistance shows how skewed this assistance is. I was informed that the criteria for the selection was the level of vulnerability and the severity of the

injuries. Stringent as it was, a number of victims missed out on this health benefit. I met one such victim during the interviews in the amputee settlement at Grafton. It was obvious that he was in agony during the interview, although he insisted he wanted to participate. He was suffering from a mysterious illness that left him immobile and in pain. Besides being unable to access any of the health care as recommended by the commission, he had also sold off all of his property in order to pay for his medical care. Additionally, all of the victims interviewed expressed various health concerns which they all believed stemmed from their amputation or injury and the difficulty they had in accessing health care due to the costs.

For the case of the emergency medical assistance, the actual medical assistance was being done by NGOs, for instance Mercy Ship, AWAFF, Marie Stoppes. I inquired about what the role of NaCSA and whether the provision of these services could be considered as reparation.

According to a NaCSA official, the reparation aspect was in facilitating access to these services for the victims.

"The reparation [aspect] there, the programme identified these victims in need, providing transport for them to come to access these services, providing them with stipend to take care of their needs whilst they are there in terms of feeding, transport allowance et cetera." (NaCSA official)

In 2012, Sierra Leone Venner (SLV) also continued to facilitate medical assistance to the amputees and severely war wounded. SLV usually hires a car and driver who goes all over the country to take individuals to the hospitals. The nurse working at the offices of the AWWA, who himself is also a war victim was funded to study the nursing course by the Country Director of SLV, Madam Elise as she is popularly known among the amputees and war wounded. He was employed to oversee the health needs of the amputees and war wounded and to coordinate their transportation to various health facilities.

Prosthetics

For the amputees and war wounded, a number of them received prosthetics however, these have not for the majority improved their quality of life.

"If I was given good prosthetic that can handle something tighter, I am going back to the [mechanical] workshop ... this kind will do nothing, it's

just a symbol. It's just to give you fitness. I have never used it ... poor quality." (Amputee victim)

In fact, during my encounters, I did not meet anyone, with the exception of one, who was using their prosthetic. He'd had his fixed in the United States of America through sponsorship with NGOs and it was quite advanced to the extent that he could use it to write, which he demonstrated.

Rehabilitation

The victims I interviewed claimed not to have received any rehabilitation services, whether physical or mental. In asking this question, I framed it in terms of whether they had received any counselling, training on how to use the prosthetics they were given or training on managing their disability.

"Rehabilitating what? There are all just, rehabilitate by what? ... we rehabilitate ourselves because we don't see them [the NGOs] since the war finish, when people are going to camp, giving us, encouraging us, for us to forget." (Amputee victim)

When I inquired into whether they received any counselling or psychological help, a number of them pointed out that they self-counselled. Religion also played an important part in the healing process as shared by one amputee.

"Ok for me, I only counselled myself with the words of the bible as I am a Christian. I counselled myself, I even counselled other ones. You put this thing [violation] in your mind, you're gone, you leave your children ... but as for me, this is part of my destiny. That each one of us have a book, I have a register before God and his predictions never fail. He wrote in my register that 'Edward you, I am sending you into the world, you go there with two hands but when returning back, you'll come back with one but I'll give the hand when you come,' so I accepted that, that is part of destiny, that's why I am always happy, I don't worry, only my worry is my colleagues." (Amputee victim)

Indeed, concerning this one respondent, I met him on a number of occasions during my two visits and he was constantly up-beat and positive and full of concern for his fellow amputees.

I also observed that the respondents generally elected to talk about their amputation even when I did not ask about it. This could have been a learned response given the high number of research activities into the lives of the amputees but it could also have been a form of seeking for validation for their harm. As such, I spent a couple of minutes with each interviewee learning about the circumstances under which they were amputated and how this had changed their lives.

The challenge in the alternative strategy for health programme was that the health care was provided to a limited number of victims. It was not long term and also not extended to dependents. In terms of content and structure, it falls far short of the type of health care that was recommended by the commission. Nevertheless, at the level of NaCSA, the emergency medical assistance was viewed as a service that was meant to fulfil in part the recommendations on health.

One of the issues that arises from this non implementation of the health services is the lack of trust in the health personnel and the services. There is a perception by the victims that there is a conspiracy to kill them off faster particularly when they go to the hospitals. This is because they *“have become a pressure group”* and they feel like their presence is not tolerated.

9.4.5.2 Education

As with the health plan, the proposal for education as reparation was also elaborate. Below is an outline of the proposed recommendations for education.

- Free education be provided until senior secondary school for selected beneficiaries
- Assistance to and expansion of existing education programmes including teacher training and providing incentives to teachers in remote areas
- Prioritise education to permanently disabled victims and victims of sexual violence

The Sierra Leone government passed a progressive Education Act in 2004 which among others required all children to complete basic education. To facilitate this, it abolished tuition fees for all children in government assisted primary and junior secondary school (The Education Act, 2004).

The feedback I got from the victim respondents indicated that they still need to finance the education of their children. This was in terms of the other costs that accrue such as feeding, extra lessons and scholastic materials.

“Look look look Monica, before they say free education, let me say, because why the teacher ask the school children at basic level is more than school fees ... you the parent provides the uniform, the parent provides the books, the pencil, the lunch, where is the free education ... even the tuition is being taken in another form ... oh lessons, you pay lessons because there the public schools, hmm ... the public schools, nothing is happening, they are just asking for money.” (Amputee victim)

As of 2012, there were no tangible frameworks in place to support the facilitation of the specific measures of education recommended by the commission. According to NaCSA, they were having on-going meetings with the ministry of education to determine how to set up education programme with reparation components for the victims.

9.4.5.2.1 An Alternative strategy: Urgent interim reparation

Urgent interim reparations were cash grants given to the victims as an “interim measure” as they wait for the fully-fledged reparation policy to be put in place. The commission was quite clear on its position on monetary awards versus service benefits and NaCSA was aware of this position however, the funding they received would simply not have been adequate to meet the reparation programme like it was envisioned, yet many victims continued to suffer.

In total, 300,000 SLL, an equivalent of \$100 at prevailing exchange rate was paid in 2009 to a total of 20,107 out of the 32,110 victims, of which 13,123 were adults and 6,984 were children. Accessibility was based on the level of vulnerability among the categories of the most vulnerable group as elaborated,

“For example, war widows, we looked at for example the number of children. There are some widows, you may have a widow with four kids all going to school and you have a widow living alone or with one kid. In terms of prioritizing, of course we’ll consider the one with four kids. That’s just an example but these are some of the factors we took into consideration. Like even war wounded, you may have some who, well, of course they are all suffering, but you may have some for example, some are still in pain while others may have received medical attention probably from some NGOs or others. So you need to attend to those who are in urgent need. You see?” (NaCSA official)

Similarly, the Le 300,000 was interpreted as educational support to meet education needs. According to NaCSA, some of the children who received it used it to enrol in school. A number of the children had dropped out of school because they could not meet the various costs associated with education but with this money, they were able to re-enrol and continue with their education. For how long they were able to remain in school however is questionable on the account that the amount is just too little for sustained educational expenses. I was also not able to verify this claim because I did not encounter children beneficiaries. However, a number of the victims did express that a portion of the money was put towards educational expenses for the children although it did not last long. Education continued to remain an issue of concern and I was usually asked for help to pay school fees for some of the children as well as connect them to sponsors and organisations who could support their children's education.

9.4.5.3 Microfinance

The commission recommended Skills Training, Micro-credit and Micro-projects for Individual or Collective Groups of Beneficiaries as part of reparations. Below is a brief outline of the recommendation.

- Facilitate the inclusion of specific beneficiaries by providing assistance to organizations and bodies providing skills training
- Conduct a market assessment to match the skills training with the skills needed on the market
- Incorporate a small-scale business management training course in the skills training course
- Provision of micro-credit or micro-projects to beneficiaries who complete the skills training

As discussed below, the microfinance aspect was not fully implemented as recommended but modified to benefit a few individuals. However, the interim cash grant given to the victims was interpreted as microfinance, albeit without the skills training.

9.4.5.3.1 An alternative strategy: Cash grants

The 2009 '*interim cash grants*' according to a NaCSA official was meant to assist the victims to take care of the services recommended by the commission but which were

not yet being provided, for instance health care and scholastic materials. However, this payment has also been referred to as 'micro-grants' in public discourse. In the media and also in discussions with officials from NaCSA, the purported benefits of this money to the victims were continuously emphasised. In 2011, the approximately 13,000 victims who had missed out during the first round were also given the Le 300,000. Also in 2011, the amputees were given Le 940,500, financed by the UNPBF for livelihood support because of their degree of vulnerability.

Framing this support as a micro grant has however been questioned as expressed by one of the victims, *"Who they gave microfinance? To who? To who did they give microfinance? When? Well, I am not aware of that."* (amputee victim)

Realistically however, it is questionable how it was expected that such an amount would be used to start a business because it was very little. Additionally, the victims in general are living on the barest minimum, many of them with pending financial obligations such as food, school dues and health concerns. In the resettlement camps, all of the victims I interviewed claimed that not a trace of the money was left. When they received the money, it immediately went into catering for their basic needs. Only one explained that he had used it to construct an extra pit latrine.

In 2010, another conditional funding of one million dollars was received from the UN Trust fund for Women through UNIFEM. This was to provide training and micro credits for women victims of sexual violence. In total 650 women out of the 4602 registered victims of sexual violence were identified for training in livelihood skills between 2010 and 2011 and at the end of the training 500\$ was given to each of them. This programme only accounted for 14% of the total victims of sexual violence.

I was not able to verify whether this process had already taken place or how efficient it had been. It was however acknowledged by both the media and general population that indeed such a programme had taken place.

This specific activity also deviates from the commission recommendation as the recommendation on micro finance grants to victims was not only specified to a particular category but across the board. Moreover, the total number of women victims of sexual violence is much higher than the number selected for the training. Although this project was referred to as a pilot programme, there is no concrete agenda on its

continuation or sustainability so it is not certain whether it will eventually involve all women victims of sexual violence or even the whole range of victims.

As with other cases involving education and health care, the implementers had to improvise and work within the parameters that had been set for them by the funders. For instance, as pointed out by one of the NaCSA staff,

“TRC recommended specifically skills training for all categories of victims who express willingness to benefit. Unfortunately the funding we received for that training was designated for the VSVs [victims of sexual violence] but at least it meets the recommendations of skills training so in as much as we’ve not done much for the other categories of victims in terms of skills training, at least we’ve done for the VSVs.” (NaCSA)

Although the interim cash grants were phrased as micro grants, the idea behind it was to provide money for the victims to be able to take care of the basic needs. It was not foreseeable at what point the services envisaged by the TRC could kick in so this acted as an alternative service.

9.4.5.4 Symbolic Reparations

The key issues raised in recommending the symbolic reparations were continued public acknowledgement and support to remembrance initiatives. The specific aspects include the following.

- Public apology from the government individuals, groups, bodies and organisations who bear any responsibility for the abuses and violations
- Establishment of at least one national war memorial and memorials in different parts of the country
- Organising commemoration ceremonies including symbolic reburials
- Declare a National reconciliation Day during which government organises and supports commemoration activities.
- Dissemination of the reparation programme including translating to local languages
- Identification of mass graves

The implementation of the symbolic reparations has to a greater extent had better success than the other programmes in terms of translating the proposal into action. However, as will be shown, it has also been limited in its application.

Apologies

The most significant of the apologies was the president's formal apology to women and all who were affected by the war in 2009. However, this was viewed as figurative because it was offered by a government that many felt had not been involved in the war. The previous government that had been in office during the war had been reluctant to apologise which many interpreted as being afraid that they were taking responsibility for the war.

Ideally the intention of apologies is to show remorse for actions. In the case of the victims I interviewed in Freetown, the offers of apologies were largely accepted but they were not taken as meaningful gestures. This is partly because the victims continued to suffer.

"I heard them when the TRC was in process, I heard them saying 'we're sorry over what we did.' As for me, sorry to them but I promise them that I will be better than you people ... the apologies, I look at the apologies, I never looked [at] them serious[ly] ... apologies are not significant for me. Let them take their apologies. Am on way trying to do what for my life until God takes me away ... apologies, I don't know." (Amputee victim)

Additionally, apologies without the tangible benefits were considered ineffective.

My perception was that whereas the victims expressed that it was commendable that the perpetrators and government were offering apologies, it did not change the conditions they were living in. They would still continue begging and struggling to survive. In fact, the apologies were even considered more meaningful to the perpetrators because they were clearing their conscience but for the victims they could not eat the apologies nor use it to pay school fees or hospital fees.

War memorials

The Relics and Monuments Commission initially explored the idea of setting up a war museum. One of the members of the commission discussed how they were involved with the West African Museum Programme (WAMP). They also attended a workshop on the impact of civil war on the cultural heritage where emphasis was in preserving memory.

“How one could relate historical events to sites so that these sites become visual sites, they become sites of conscience as well. A Sierra Leonean will go to that site, they know the reasons for that site, what did it entail, what happened? You just don’t go and look, you need to think, you need to be conscious of actions that had taken place or taking place you know, then you reflect so that stuff like that does not happen in the future ... change your attitude. That was the reason for that workshop.” (Member, Relics and Monuments Commission)

The Relics and Monuments Commission however did not pursue memorialisation using the war museum project. For one, they were not in charge of the project, they simply had two members from their commission represented in the war museum committee. Lack of funds was also raised as one of the challenge. By 2011, they were not actively involved in the memorialisation project.

As of 2013, the premises that housed the Special Court for Sierra Leone had been transformed into the Sierra Leone Peace museum. Information on the website of the peace museum indicates that this was through a recommendation from the government of Sierra Leone to establish such a project after the closure of the court.

The Open Society of West Africa was also involved in a project of documenting the impact of civil wars through photography and video. This was in partnership with the WAMP and Sierra Leone National Museum. While I was in Freetown in 2011, an exhibition on the civil war was going on in the museum in which photographs and artefacts from the war were on display. Part of the package included a guided tour with full narratives of the pieces and photographs. The acting curator explained that they regularly organise educational awareness raising programmes in the context of the civil war.

The war museum project was however not seen in a positive light by the victims considering the amount of money that would be spent on it and the still pending reparation programme. In the first instance, they expressed support for it in their statement as elaborated below by one amputee. Perhaps this was a tongue-in-cheek response because it was preceded by a dry laughter and shaking of the head.

“They have spent almost around one hundred ninety something thousand dollars. They want to build a monument at the special court, all documents of the special court, the TRC, people like you will come

tomorrow there to get some facts so I welcome that ... I think that programme is on course and I would like that monument for the future of this country, for the generation yet unborn to know about what happened in Sierra Leone today, people born in the outside world will come one day and look. I honour the monument, it will be built very soon ... it took \$ 195,000 to do that job at the special court.” (Amputee)

However on further probing regarding the money spent on building the monuments and their situation, they expressed the concern that they would have rather seen the funds go into the trust fund for their livelihood benefit but as it is, they have no control over the allocation of funds.

“Yes I requested them to send this money to the trust fund but there was no way, the programme writer said no, this will be a monument that will live for, that a war legacy would be there for long years, thousands of years, the people from all over the world will come one day and look because they are going to build a library ... so I know that whatever I say there they won’t release that money for us so I just say, I say, ‘ok build it’.”
(Chairman, AWWA)

There is indeed a genuine concern over memorialisation and remembrances. The amputees I interviewed worried about being forgotten and about how they are the face and the reminder of the war and once they all die, the war will be forgotten but on being given a choice between the memorials and their livelihood enhancement, they would prefer the latter.

“[what is] the point of a monument? The people are dying, they’re suffering ... it don’t go down well with us.” (Amputee victim)

Commemoration ceremonies

These were a series of ceremonies, tailored to specific chiefdoms to facilitate community healing. The symbolic measures were to facilitate reconciliation and healing.

“Bring about community healing. For people to come to terms with the past ... [the war] affected not only individual lives but it also affected communities. It affected people’s belief system, there was a deliberate attempt to destroy some of the social fabrics of society ... people were forced to commit certain acts considered to be sacrilege within their specific regions ... traditional societies, traditional practices were

brought to disrepute, traditional authorities were abused ... the symbolic reparations was actually to promote the process of healing these communities, making them come to terms with what had happened, sort of trying to win back the bond.” (NaCSA)

According to NaCSA, the process of carrying out the ceremonies was participatory where local communities were involved in identifying measures that would enable them to come to terms with what happened and help them to go back to normal traditional practices. The role of NaCSA in these endeavours was to provide the support to people who have the expertise to carry out these rituals in the specific communities. The support included the financial resources and specific items required for the ceremonies.

“For example, for all those who were killed, we had what was called the symbolic burial for all those who were killed and buried without ceremony. It is a belief that when somebody die that individual, a human being is different from the dog, for example a dog can just be buried but if a human being died, dies, we need to take him or her to the church or to the mosque, prayers are said for him or her before being buried so what we did was, we go to a particular chieftdom, that is just one aspect of the symbolic reparations ... we will conduct the symbolic ceremony, we go to the church, prayers are said for all those who lost their lives during the war in this chieftdom who were buried, the Christians who were buried without being taken to church for their bodies to be prayed for. This service is for them, we conduct the service and then there is a symbolic reburial wherein, not a real corpse but a symbolic corpse is taken to the grave site. The funeral, all the funeral rites, all the Christian rites will be followed, the same for the Muslim, all the Muslim funeral rites will be followed on behalf of all these victims so at least if you have a relative, you know you are a Christian, he was killed, this was done. You will know the government has done something.” (NaCSA)

Additional support was also provided to the secret societies such as *bondo* and *poro* in particular chieftdoms to carry out ceremonies for acts of desecration during the war. At the end of these ceremonies, the community was also encouraged to propose a commemoration symbol in terms of a monument, which was constructed in all of the chieftdoms in which these ceremonies took place.

In total 40 chiefdoms out of the 149 chiefdoms had such ceremonies, rituals and monuments established by the end of the one year project.

National Reconciliation Day

The TRC recommended that January 18 be designated as a national reconciliation day. This was not being celebrated nationally however while I was in Freetown in 2011, the University of Sierra Leone's department of Peace and Conflict Studies organised a series of lectures to mark the event.

Dissemination of the recommendation on Reparations

In the interviews, I inquired about what they knew about the reparation recommendations and it was clear that the victims were aware of the basic content of the reparations. They listed among others free treatment at the hospitals, school fees and materials for their children, pensions and micro finance grants. This knowledge was not only limited to the victims but also extended to the wider population who supported the award of these benefits to the victims, particularly the amputees.

Extensive sensitisation campaigns were carried out to raise awareness about the recommendations and clarify on what the benefits would entail. This was done through radio and television debates and shows. Much of this information is also accessible online through the running website of TRC with the full report and alternative versions such as for children and secondary school.

There is also a video summary of the TRC report which was shown across the country as well as a music CD. Although none of the respondents possessed a copy of these items, they had heard of or seen excerpts either over the radio or TV. WITNESS supported the production of a video summary of the report summarising the key findings and recommendations while the music CD was produced with the assistance from UNIOSIL. It comprises of catchy renditions of the findings and recommendations, sang by local artists in *Krio*.

Identification of mass graves

None of the respondents I interviewed expressed any awareness on the identification of mass graves. According to NaCSA, this feature of the symbolic reparation has not yet been implemented.

The symbolic reparations, particularly the apologies and memorial events may have been carried out but these were not perceived as wholly satisfactory for the victims.

"You are telling me that it is a symbolic reparation, what do you mean by symbolic reparation? What we need now is money where to push our lives." (Amputee)

9.4.5.5 Pensions

The commission recommended that a minimum of Le 60,000 monthly pension be awarded to adult victims who had experienced 50% or more reduction in their earning capacity.

During the period that I was in Freetown, the chairman of AWWA said he was in discussion with NaCSA over the issue of pension for the amputees and war wounded but the meetings did not seem to be registering any significant progress. He identified two areas of contention; the proposed amount and the narrow scope of victims.

According to him, the amount that was being proposed was Le 250,000 per month for the amputee victims only and the payments would start in 2013. He opposed this plan because the amount would not be enough to meet their living costs. It also excluded the other war wounded, some of who had debilitating injuries. He therefore proposed Le 450,000 and the inclusion of all other war wounded victims.

An official at NaCSA however clarified that the scope of beneficiaries would be determined by the recommendation of the TRC that proposed that the beneficiaries would be adult amputees, adult other war wounded with 50% or more reduction in earning capacity and adult victims of sexual violence. It is not clear where the communication hitch occurred but it resulted in bitterness within the AWWA.

The NaCSA official was also reluctant to give a specific amount for the pensions because the amount was still being debated and would probably be reflected in the 2013 budget. But overall, they are engaging with the responsible institution, NASSIT to map out a plan for the inclusion of the victims into a social security plan.

In an interview with a staff at the ministry of finance however, he explained that the inclusion of a group on the pension scheme is a detailed procedure that requires legal requirements in place.

“This particular information which regards payments of pensions to victims of the war have not yet been concluded by parliament. Because I am working as an accountant here, I do make payment to people when I receive the appropriate from the ministry or parliament and it should be a statutory instrument. That was a working document that was prepared by the TRC and it needs to go through parliament, then parliament will make the necessary recommendations, how are we going to pay them, how much are we going to pay them, like for instance ...Just like for the military as I have rightly informed you, we pay them according to their disability percentages so this one I think is yet to be completed by parliament ... I have not received any documents with regards to that and my responsibility is to make payments according to instructions being given to me from either parliament or from the minister himself and the minister also have instructions from parliament, so while I have the parliamentary document or instrument giving mandate for a particular payment to occur then we are not obliged.” (Staff, Ministry of finance)

In a later communication with the Chairman of AWWA, he reported that the pension scheme was put to rest. In 2013, which would have been the year when they would have implemented the project, they were given a one-off \$ 1,400 each and requested to sign documents guaranteeing that they would not request for any more money. This amount was limited to the amputees and some of the other war wounded.

9.4.5.6 Community Reparation

I consider the TRC conceptualisation of community reparation rather broad and ambiguous. Its emphasis is on a programme of reconstruction, rehabilitation and consolidation of institutions in certain regions and communities that are considered to have suffered more devastating effects of the war to *“make them whole again through the provision of capital and technical assistance.”* (TRC Volume 2, 2004:265). The criteria for selection of these regions was to be based on assessments by different bodies and organisations such as *“the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the United Nations Mission in Sierra Leone (UNAMSIL),*

United Nations Development Programme (UNDP), National Commission for Social Action, Department for International Development (DFID), Sierra Leonean Rural Reintegration Project (SLRRP), and others on the level of destruction of infrastructure in districts and what work remains to be completed or initiated in some cases.” (Truth and Reconciliation Commission, Sierra Leone, Volume II, 2004:265)

In the discussions with NaCSA, this aspect of reparations was not yet being considered but on the whole such programmes targeting reconstruction and consolidation of institutions were being carried out as part of the national development agenda.

9.4.5.6.1 An Alternative Strategy: Housing

SLV, a Norwegian organisation took up the construction of houses for the amputees and severely war wounded. In total, by 2012, 850 houses had been built in different areas of the country. The role of the government in this project was to provide the land and this was acquired through the permission of the paramount chiefs in whose jurisdiction the houses are constructed.

During the interviews, the respondents maintained that they were accepted in the communities they had relocated to and were living peacefully. This claim was also corroborated by the President of the AWWA who said that they carry out sensitisation and awareness campaigns among the local communities and also between the beneficiaries and their future neighbours where they emphasise peaceful living.

“Before we send them to their different locations throughout the country, we inform the paramount chiefs, elders, they even make some performance ... make the community understand that these people are coming to stay with you, you should take them as brothers and sisters and you the victims, you’ll go there, live with them together as brother and sister.” (Chairman, AWWA)

This harmonious living is not a claim I could ably verify because the other members of the community were reluctant to participate in the interviews although in informal discussion with a couple of them for example while eating at the local restaurant, they said they had no problem with the amputees settling in their community. I also observed that the areas around the camps seemed to have a business vibrancy to it. One of the respondents claimed their presence, in terms of increased infrastructure was a boost to the development of the area.

"I can remember my location in Waterloo when we were repatriated in 2002, we were alone in that site but now we are the centre of the area, all this area has been built houses." (Amputee victim)

9.4.5.7 Victims Trust Fund

The victims Trust Fund, was launched in 2009, five years after it was meant to be established. Its purpose was to finance the reparations *programme* or a *basket fund* where all money intended to benefit the victims would be channelled through. This launch in a way has been viewed as a willingness by the government to put victims concerns into consideration.

This fund has however been faced with the unavailability of resources. According to one of the programme officers at NaCSA, the major challenge is encouraging people to contribute to the fund and this cuts across the board, whether Individuals, parastatals, private business houses or donor community. There have been some contributions from individual organisations, although I was not able to access the specifics.

A NaCSA official mentioned that they were continuing with emergency medical assistance on a case by case basis using the funds in this trust fund however the chairperson of the AWWA disputed this assertion as he pointed out that he had been trying to follow up individual cases that required medical attention but these had not been forthcoming.

"Right now, I have somebody whose case is very serious on that, you know these people are just lying on people, lying. Now I have somebody who wants to be, he is already admitted at the hospital, he is already there right now in the hospital but they don't care, and I reported that matter. And there is somebody whom I asked for them to do operation, he got some problems, some hernia to do operation but it has taken almost a year just to do that operation, nowhere ... I have been behind these people ... there is someone doing a diploma, gave me his tuition fee papers. I presented it to NaCSA so they told me that they will see into that, up to now, now they are soon or later they will drive the man out of the college because of no tuition. It is about nine hundred and something thousand."
(Chairperson, AWWA)

9.5 Salient issues arising interviews

In the following section, the issues presented were perceived as significant to the direction the implementation of the recommendation on reparation took.

9.5.1 Significance of the limited implementation

One of the outstanding consequences of the limited focus on reparation issues has been the creation of a feeling of abandonment for the victims. The amputees I interviewed reiterated how they were being ignored because they were not a threat as compared to the combatants whose programme was swiftly funded and implemented. They also believed that there was a conspiracy to get rid of them, particularly the amputees who bore the physical reminders of the war.

The feeling of remorse for not fully implementing the reparation programme was also shared by other members of the community who considered it a shame that these individuals who through no fault of their own continue to suffer unfairly. All of Sierra Leoneans suffered but some of them have managed to cope and rebuild their lives. The amputees and other vulnerable groups on the other hand have not been able to overcome their difficulties because the means through which they would have started afresh was taken away from them. As one respondent pointed out, the consequences of ignoring the victims are far reaching beyond the individual.

"We're not really very seriously as a people and as a country taking reparations aspect of reconciliation very seriously and that has very serious political implications because if those who suffered directly continue to suffer and they see those who were responsible for their suffering enjoy, then they begin to recall all those sad memories. It even becomes worse when some of those who were directly responsible for their suffering are now seen along the corridors of power." (University Professor)

9.5.1.1 Activism

The AWWA stated that they were taking action to publicise their plight.

"We wrote a letter of protest that we are ready to come to the streets for the whole world to know that nothing is being done for us and we are dying every day." (Chairman, AWWA)

Interestingly, the AWWA had been founded as early as 2002 but had lacked the vibrancy and visibility. During the first meeting in 2011, the incoming Chairman of the association was restructuring and seeking to attract funding and publicity for the Association. They were compiling and updating the database of their members but had also come to the realisation that they would have to specialise their cause to amputees and war wounded rather than the entire spectrum of victims.

In 2012, the Association had a physical address with a newly built and furnished office in Freetown. Whereas previously we had to meet in restaurants, during my second visit, the meetings were held in the Chairman's new and comfortable office complete with a full time staff of five.

The Chairman of AWWA also reported that he had been called for a meeting with the president and he seemed quite vocal about their demands and what the content of the meeting would entail for instance he indicated that he would focus on cash payments for the amputees.

"I am going to ask for cash and I am going to give them dates, they don't give us, we go to the streets, we die, we forget about it."

After the meeting with the president, I inquired into his threat for the planned demonstration and he reported that he was bold in his demands.

"I say, are we responsible for what is, what happened to us? So I say I am desperate, I will not wait any longer, we are going to make a peaceful demonstration very soon if we don't get any good answer, we don't get good word from state house, we are going to march peacefully throughout the whole country. I say I am going to inform all my chairpersons at the different districts, then, perhaps I will wait when you are celebrating your independence, while you are celebrating, we are outside ... I was desperate."

9.5.1.2 Resilience

A number of amputees have been able to reinvent a vocation to bring in an income.

As for me, when I got this problem [amputation], I was a mechanic ... I think what to do because I don't want to go to the street and beg but my mechanical know-how gives me an idea, that I should do photographing.

I was doing photographing this past years. I was getting my living with my family, taking care of my family.” (Amputee victim)

9.5.1.3 Resentment of the international Community

There seems to be resentment towards the international community which is perceived to have left an incomplete process. Their heavy involvement immediately after the war in the truth commission process apparently did not transition into the post truth commission phase.

“The international community was only to see that Sierra Leone got peace, so they came in with their money and finished with the war ... this was sheer wickedness by the international community. They should have completed their job but they left it hanging. They should have taken over our problems. They could have said okay government 50%, we 50% ...the government of Sierra Leone, they have so many assignments on their hands, implementing this reparations without the help of the international community, it would be very difficult.” (Amputee victim)

9.5.1.4 False speculations

The delay in implementation has caused speculations about the intention of the implementers. They have alleged that the whole process is filled with corrupt officials who are swindling the money for personal gains.

“They don’t just want to do it [implement]. The money is there. They’re taking this money within their pockets, the money is there but they are just greedy and selfish.” (Amputee victim)

*“My conscience is convinced that they are giving them the money.”
(Amputee victim)*

One of the respondents further narrated a case where a victim was hospitalised and a bill was presented to NaCSA which they believe was exaggerated and is meant to benefit some individuals.

“You know in this part of the world, let me say here in Africa, all over Africa, when someone gets a chance where he can make money, because there is no body to ask him why, why did you do this, why did you do that? So they do things they like...it’s a coordination, a coordination between

workers from here [NaCSA] and with the doctors, they work together...with such kind of money, it actually tells me that something is wrong with that bill...That is why I told them doctor or no doctor, give us money we find our own doctor.” (Chairman, AWWA)

With regards to the trust fund, there was speculation about the availability of funds in it which are however being cleverly embezzled as put by one respondent,

“To my understanding, that trust fund because they only tells [sic] me that there is 200 million ... but that trust fund is a trust fund they are trying to exhaust with on medical bills, exorbitant medical bills, look at this one is for the medical bills, 7,000,000 ... so they are now trying to exhaust this little money in the trust fund with medical bills while we don’t benefit.” (Chairman, AWWA)

Even when they are fighting for a change in the situation, there is still a sense of hopelessness. There is no guarantee that the situation will change for the better.

“Hope you come back, perhaps you will meet us where we are today, same thing, same story, you don’t know these people.” (Amputee victim)

9.5.1.5 Sustained suffering

As proposals which were meant to improve the lives of the victims and enable them to meet their basic needs continue to be put on hold, their suffering is stretched on as put by the chairman of AWWA.

“Nothing, nothing has been implemented, nothing, nothing, tell them nothing, there are people dying up there, dying every day, I remember when I went to Port Loko, I met a lady who was so sick that after I was running to Freetown to somewhere where I could get money so that they can take her to hospital ... I was called that she had died.” (Chairman, AWWA)

9.5.2 Vision of what a reparation programme would entail

As pointed out in the preceding section, there was a considerable amount of criticism against the reparation programme, either over its content or its non-implementation. I was therefore curious about what a reparation programme would entail.

9.5.2.1 Addressing the root causes of the conflict

On a general level, respondents pointed out the need for a TJ process to address root causes of a conflict and seek answers as to why the war happened in the first place. Such a holistic approach would entail that structural injustices are effectively addressed.

“Injustices in the system, social, economic, political injustices ... if you want to guarantee that we do not repeat that kind of thing, you have to ensure that those things which caused the problems in the first place are eliminated.” (University professor)

A reparation programme should therefore promote social, political and economic equality.

“How do you ensure that, you know, people have a stake in the governance system of the country? How do you ensure that the common people, you know, are able to earn a living? ... the enabling environment as you call it is created so that people can make full use of their potentials because when people are usefully engaged, the thought of engaging in violence is very minimal but when the brain is idle ... any so called liberator will come from nowhere and recruit them easily ... reparations thus should focus on the structural imbalances.” (University professor)

9.5.2.2 Preference for cash

There was a strong preference for cash payments or “hard cash” as it was referred to. On further probing, the President of the AWWA estimated that they would ask for 10,000,000 SLL for each amputee and war wounded victim although he was very much aware that this would not be the final amount.

“Let’s say we are bargaining, we can ask, you always ask high then they will beat it down. So that’s it ... it will be a hard tussle. I can’t say it [the final amount] now because I too I will be very hard.” (Chairman, AWWA)

Also, in lieu of the services that are to be offered such as health or education, the victims also preferred cash but through a periodic payment scheme. For instance the chairperson of the AWWA argued that,

“Let them give us the hard cash, we just find our medical doctor ... what I am planning is, we make it like a payslip, medical, this is the money for

your medical, monthly or quarterly or any two quarters of the year, then this is for medical.” (Chairman, AWWA)

By giving cash, it would mean closure and no holding onto promises.

“In this country, people easily forget. For me I wanted, I want these people to do everything [give the money], we forget about them they forget about you, this is what I want. Give us the hard cash, then we forget about you, how we live, [is] how we live.” (Chairman, AWWA)

9.5.2.3 Trust fund for victims

Based on the findings, I established that there was no direct representative of victims on the management of the trust fund. On inquiry into how a trust fund could be run, the common thread was on having representatives of victims on board which would enhance transparency and create a more target driven assistance since such a representative would know victims needs better, being a victim themselves.

“The most rational thing I would see done is for yes this is the official, the government official but there has to be an amputee, a victim who will be a part of that administrative hierarchy to see that everything is being done accordingly. That person will be the messenger to go and tell the companion to know that this is how we are operating. When they know that there is a representative in that executive hierarchy then there is confidence. Then they will not feel like their money is being squandered. That is our problem at this particular point in time, they see that they receive this money on their behalf but they don’t see it [the money].” (Former TRC staff)

9.5.2.4 Neutral body

“A neutral body that overlooks the implementation” was preferred to the current reliance on NaCSA and other government agencies to oversee the implementation of the reparation process.

9.5.2.5 International influence

The respondents had a strong feeling of abandonment and betrayal by the international community who were initially supportive of the truth commission

process and then did not continue with the similar level of support towards the implementation.

"This implementation should not be solely with government there has to be an intervention by the UN to appoint personalities to work with government in the implementation...not much will happen [with the government alone]." (Former NRC staff)

9.5.2.6 The implementation process

The respondents pointed out that an implementation process needs to be systematic and consistent with the proposals as suggested by the commission.

"Somebody else will have to come back to look at what is in the report? What does this implementation entail? Is it viable? Does it [resonate with] the views of the commission? There is nobody who has done." (Former TRC staff)

Similarly, the respondents also had views on the ideal character trait of the implementers.

"One that is apolitical, a politically conscious somebody who belongs to a particular party will seek the interest of that party in power, that is critical." (CSO)

"A judicious implementation programme implementer is one who has the nation at heart." (CSO)

9.5.3 Challenges in implementation

The respondents identified a number of challenges in the implementation of the reparation programme as discussed below.

9.5.3.1 Delays in implementation

There were considerable delays in starting the reparations programme. The actual implementation started in 2008, four years after the release of the report.

A number of explanations have been put forward for this delay. Two main reasons stood out; inadequate resources to follow through with the recommendations and

political will. Respondents argued that for a country that had just emerged from a decade long war, it was faced with competing demands. Reparation, in this case, although considered important did not fit into the overall reconstruction picture. There is an accepted understanding that the government does not have the available resources and therefore has to prioritise and victim reparation at the moment is not a priority in the face of other pressing issues.

For instance on the issue of constructing monuments and symbols, one of the respondents pointed out that it was understandable that government could not commit to that venture because it had other duties to fulfil.

"But there was no, there was insufficient funding for that, and the government was not in a position to say build a war museum when they have starving people, when people need houses, damage onto their properties, so the priorities were refocused, never mind they were contained in the TRC report but due to the limited resources available, they had to refocus." (Member, Relics and Monuments Commission)

Secondly, it was not until 2007 when funds were made available by the UN Peace Building Fund that the reparation programme was kick-started. As pointed out by an official at NaCSA, this was because government turned its attention on the reparation issue.

"It was because the government put reparations on the agenda and in negotiating to trying to secure assistance from our development partners. They forwarded the reparations as one of the key areas to move forward with so one can also say the political will was demonstrated at this latter part though there was change of government and based upon the fact that it was put on the agenda we started in 2008." (NaCSA)

The change of government referred to here is the switch from the SLPP to the APC through a presidential election in September 2007.

The UNPBF was provided for one year only despite the expectation that it would continue and this brought the reparation programme to almost a standstill. Even when the unit received funding in 2010, it was not nearly half of what they had got earlier. In addition, the TFWV continued to not attract any contributions which greatly hindered the reparation programme.

Since 2010, NaCSA re-strategised and turned its focus on attempting to mobilise resources internally by working directly with the government.

“Towards the end of 2010 when it was realised that we are not going to get much in terms of funding from external partners, we started working with the government ... a concept paper was developed by the director and forwarded to the president’s office highlighting the areas, some of them were on the recommendations of the TRC for example percentage of mineral resources, budgetary allocations et cetera highlighting key areas where they will be able to mobilise resources internally to finance the programme.” (NaCSA official)

9.5.3.2 Managing expectations

The victims had witnessed what the combatants had gone through during the DDR process. They were also aware of similar reparation programmes in other countries, notably South Africa. They were therefore expectant of a sum of equal proportion or even larger than what the perpetrators had received, after all, they were victims who had suffered during the war. It was therefore a real challenge on how to manage the expectations of the war victims against the resources that were available.

“When we started, you know it’s a new programme, we, we were faced with the challenge of managing expectations of the beneficiaries. You know they have all been waiting for this reparation, now it is here, they wanted everything from reparations, so managing their expectation was a big challenge.” (NaCSA official)

In an attempt to manage the expectations of the victims, NaCSA engaged in a programme of massive sensitisation about what the reparation would entail. The campaigns were carried out in both electronic and print media. They did interviews, participated in talk shows on both radio and television. They were also able to develop and engage institutions at the local level as a means of disseminating the appropriate and relevant information. The Programme Director of NaCSA was confident the sensitisation programme was a success because they were able to foresee more realistic targets. Sensitisation however also came with financial obligations which again limited their scope.

It should also be noted that a lot of effort had been directed at popularising the recommendations, therefore, the victims were aware of, at least superficially, what was

contained in the recommendations on reparation. They are aware that they are entitled to free medical care, free education of their children, a monthly pension, community reparations and symbolic reparations. Some also mentioned free public transportation services.

9.5.3.2.1 The profile of the victim

In discussing the life of the amputees, I asked them what they were doing professionally before the amputation. I got a mix of four responses; student, petty trade, farmer or a vocational trade such as tailoring or mechanic. Also many of the victims were from the provinces where the heaviest of the war took place. The general profile of the victim is a non-elite with little to no formal education. The recurring question therefore was how does a programme engage in providing relevant livelihood training? This was an issue also raised by a NaCSA official during the discussions.

“You might want to say you provide skills training facilities to these people but if these people are adults ... they’ve never been used to school setting, they’ve never been used to going to vocational institutions for them to be trained, some of them don’t know how to read and write. For you to capture their attention so that you can teach them these skills for them to be self-reliant is another big challenge.” (NaCSA)

The victims, during the discussions were however keen on becoming self-sustaining rather than relying on handouts. Although many of them emphasised that they would like to be engaged in trade, they were still overwhelmed with meeting their basic needs. For most, the urgent interim reparations was used to meet some of these needs, rather than for micro-projects as speculated by NaCSA.

9.5.3.2.2 The reluctant victim

Some of the victims fell through the cracks either intentionally by deliberately disassociating themselves from the harm or inadvertently by simply missing out on issues like deadlines for registration. I for instance interviewed one female amputee who said she had not received the first payment of Le 300,000. When I probed further, she said they told her that her number was not in the system. Interestingly though, she had received the second instalment of Le 940,500. She preferred not to pursue the issue of the missing funds though.

The most prevalent reluctant victims as pointed out by NaCSA are the victims of sexual violence who because of the stigma associated with sexual violence, were reluctant to come out or register as victims. Some of them therefore end up being excluded in the reparation programme.

“There are thousands of them, they have not come out, some feel that if they come out, they will lose their positions in society, they will lose either their marital status or the position that they hold for fear that people will say these were victims of sexual violence, they will look at them from a negative lens.” (NaCSA)

A strategy to deal with this group was in engaging women organisations who had dealt with them during the war. They were then able to persuade some of them to participate. In the end, some came out to register but still others, particularly those who are highly placed in society, refused entirely to get involved with the reparation programme. Early in the field work, I was also informed by a respondent from a women’s organisation that it would be challenging to get in touch with this group for research, particularly because I was based in Freetown and only for a limited time.

9.5.3.3 Administrative hurdles

The administration of the reparation programme faced a number of challenges as discussed below.

9.5.3.3.1 Operational

The reparation unit in NaCSA was a new creation and therefore experienced the difficulties that come with getting it operational, particularly in terms of staffing and resources.

“Now we have skeleton staff to run the programme, of course we are operating, the unit is operating within NaCSA and we are making use of the district staff of NaCSA but they also have other activities. We do not have staff in the region who are there specifically for reparations, so that’s some of the challenges but that’s dependent upon funding.” (NaCSA)

It was also pointed out that reparations being a new concept meant that there was need for a lot of technical input in order to be able to address the various aspects of the

programme. The NaCSA team closely liaised with civil society who were more conversant in transitional justice aspects to learn more but also participated in regional trainings and conferences with a focus on reparation.

9.5.3.3.2 Regional distribution

Sierra Leone is divided into four regions: western, Southern, Northern and eastern. According to a NaCSA staff, any intervention needs to be perceived as being fairly distributed among the four regions otherwise concerns of favouritism arise. The reparations programme equally had to meet this criteria in its implementation so that none of the inhabitants in a particular region feel like they are being left out which could be a potential source of disgruntlement against the programme.

"It has to be fair distribution of the resources you have otherwise you will be reprimanded. They will say oh, because he is doing more things in the north because he comes from the north or you are segregating those in the western area because you are from the provinces and so on and so forth, so you have to be mindful of that." (NaCSA)

9.5.3.3.3 Integrating the programme into government services

A large portion of the recommendations related to making certain services accessible to the victims. Such services were already in existence under the general development agenda. However limitations related to for instance associated costs or location hindered the majority of victims from enjoying them. Bridging the gap between the reparations and government programmes necessitated integrating aspects of reparation into the ministerial agenda.

None of the ministries recommended in the report had as yet set up reparation units as provided for in the report. But as explained by the Programme director, NaCSA, this issue again relates to the funds. The government and relevant ministries have their own agenda and budget. Reparations are unique because they are targeted at a specific category of individuals. However, service delivery as reparations requires going an extra step beyond what is already being provided to the entire population.

"It's like giving you [the victims] everything free, free, free whereas there [regular government programmes] you have to programme yourself to make sure if you are providing education you know you only have to set up the structures, you pay teachers but for the students they have to pay

for themselves whereas a reparation programme will tell you, you have to allow the victims to be taught freely.” (NaCSA)

The free services however come with associated costs and going by the number of victims, the ministries become reluctant to incorporate such services without an accompanying budget to cover their provision.

Streamlining these programmes within the ministry also involves a more complex process of being approved by the cabinet and parliament. As explained by the Programme Director (NaCSA), the process involves the necessary laws being drafted by the law officers department in each ministry which then go through cabinet where they are given cabinet decision. They are then sent to parliament for ratification after which they become law. It is only then at this point that they will be implemented. According to NaCSA, they have developed a cabinet paper which they are using to engage the line ministries so that they are able to carry forward those functions.

The framework proposed by the TRC recommended that NaCSA remains an oversight body to coordinate the implementation of the reparation programme. It delegated various aspects to different bodies. However in the process of the reparation that has so far been carried out, NaCSA has taken on the lead role, carrying out the functions of implementation as well as oversight. The perceived monopoly held by NaCSA has created speculations of exclusion of other organisations and the suspicion that the people at NaCSA want to keep all the money for themselves.

The reparation unit also has to work to rebrand their image particularly because NaCSA's role was already established as a social delivery organisation.

“NaCSA is more of a social service delivery mechanism than the human right thing you know they are more interested in providing social, it's a social form you know they are more or less engaged in putting up structures you know, community structures could be a school, it could be a market, it could be a community centre, you know those kinds of things.”
(CSO)

Despite this initial perception of NaCSA, more and more people are associating it with the reparation programme, particularly for the victims.

Another prominent institution which is facing challenges to integrate the reparation aspect into their programme is the HRCSL. The commission however does have a Reparations desk officer who is working with NaCSA in terms of *“advocating for resources and sensitisation programmes.”* (NaCSA). But again, the bulk of the HRCSL remains monitoring of human rights violations in the country, and not reparations.

9.5.3.4 Shifting interests

Another of the issues raised was that many of the CSOs programme areas shifted following the end of the TRCs. This was a survival mode whereby the organisations have to rebrand to attract donors.

“When the war ends, a year or two people find newer sports where they struggle and they move away.” (CSO)

During the TRC process, there was widespread civil society involvement, a number of these NGOs were very visible but have not been quite vocal in the post TRC phase.

“There have been organisations who have been working in the truth and reconciliation, they have been working around about the process of reconstruction. They were right at the heart of human rights issues and they’ve been in the areas of the conflict and even after, you know how involved are these organisations in the reparation process?” (CSO)

Although this claim was made by some respondents, they were not able to provide specific names of such organisations.

The civil society has also been accused of not being vocal or involved in issues of ensuring the reparation for the victims as expressed by the Chairman of AWWA,

“Even I called the attention of the civil society, up to date, they don’t give us a word, they are just, even when they talk, talk, talk, talk, nothing comes out of it, I am the only one going down knocking doors this, that, so it is very difficult, very difficult.” (Chairman, AWWA)

This assertion could very much be valid because when interacting with a section of civil society organisations, they expressed that victim reparation was not in their core programme areas.

Another aspect to the NGO involvement has been that when they do get involved, it is rarely a combined strategy. Each NGO comes in with its own agenda such that rather than approaching the issue of reparation as a whole, each organisation selects aspects that reflect their organisational goals. Amnesty International in Sierra Leone for instance was interested in women victims of sexual abuse and their involvement was to drive this issue on the agenda and advocate for the women victims' reparation programmes.¹³ Even as part of the Reparations Committee, their objective was on the inclusion of women victims of sexual violence in the reparations package.

NGOs however have to survive and one of the respondents referred to them as “*survivor organisations*” where they are dependent upon external funding and so will adapt their programmes to fit into the existing sources of funding.

“Running around government to implement recommendations, it’s not very interesting. Running around donors to do a quick implementation of a project could be more beneficial.” (CSO)

9.5.3.5 Sustainability

Seeing the struggle to implement the reparations using the limited funds raised the issue of sustainability of such programmes. It was pointed out that it is important to address the issue of availability of funds to cover the entire programme.

“Making recommendations is fine but then at the end of the day, how do you implement them? You need funding and by then the war had cooled down, other conflicts had taken precedence or centre stage elsewhere in the world.” (University professor)

The issue of sustainability was also raised in terms of how long the services they intend to provide would last and if they would have an impact. One of the respondents expressed his doubts over whether they would be able to maintain for instance the provision of access to services.

¹³ See for instance, Amnesty International’s 2007 publication on reparation for survivors of sexual violence (Amnesty International, 2007a)

“These things that you’re calling here [social services] when they started it, let me say, this month [it might work], next month it will be very difficult to get things, it will be very very difficult.” (Amputee victim)

The experience from the programme so far implemented by NaCSA already indicated that reparation programmes were one-off yet most of the victims faced lifelong hurdles.

9.5.3.6 Funds

Reparations require money and a whole lot of it. Unfortunately, for post war Sierra Leone, there are a lot of demands on its resources, even over a decade after the end of the war. According to the Programme Officer, Reparations Unit in NaCSA, this has been one of the key challenges of the reparations programme. The focus of government regarding transitional justice has been on mechanisms to foster and consolidate peace and restructuring institutions.

“You can’t continue providing more resources to the war victims, you don’t have light, you don’t have medical facilities, you don’t have water, you don’t have educational facilities for the general population. If you look at the percentage of the demand for the general population and the victims, their poles are vast as well.” (NaCSA)

According to the programme officer, faced with the various demands, the government could not inject direct cash grants into the reparation programme but rather contributed in kind in terms of infrastructural support such as offices all over the country to ensure that the staff who could implement the reparation programme were provided the conducive and enabling environment to implement the reparations programme.

However, the offices referred to here are the NaCSA offices which had already been in existence prior to the reparation programme. These were therefore not entirely new structures but buildings the NaCSA reparations unit could access at all levels.

The funds that were received to implement the reparation programme clearly fell short of financing a fully-fledged programme. In 2009, the UNPBF provided three million USD towards the reparation programme with a caveat that 75% of that was to go directly to the war victims. Three million versus 32,373 victim’s at the most basic level without

meeting other additional expenses and requirements would mean roughly US\$ 92 per victim. At this initial stage, NaCSA therefore decided to pay out an equivalent of USD 100 to 19,207 victims selected on the basis of the level of their vulnerability in addition to carrying out the registration exercise, emergency medical assistance and symbolic memorialisation and commemoration activities. Similarly, the one million USD provided by the UN Trust Fund to end violence against women could only cater for 650 of the 4602 victims of sexual violence for a training and micro finance programme projected to last two years.

Other sources of funding included the German government that contributed technical assistance, although it was not entirely well-defined what this aspect involved. The government also provided contributions in kind to augment what had been given by the other donors. In the first year, it provided \$ 240,000. Much of it was in kind in terms of infrastructure provision but part of it was also for the salaries of the staff. In 2011, it allocated approximately Le 700,000,000 (\$155,988), most of it also in kind support or *“operational and administrative aspects.”*

Whereas the unavailability of resources has been a constant challenge for the implementation, this is not such a clear cut matter. Many view the funding challenge as the willingness or reluctance of government to allocate necessary funds to a particular programme.

“Let nobody tell you that the country does not have the funds to bankroll an effective reparations programme.” (CSO)

One civil society member argued that it has less to do with the funds than with commitment, both from the government and the international community. The contribution to the Trust Fund for War Victims has not exceeded one million dollars and the total for entire reparation programme has not exceeded seven million dollars. In contrast, as of 2009, 208 million dollars had been spent by the special court. This disparity clearly shows where the priority of the government and international community lie. Also in 2009, the government introduced a free health care programme for lactating mothers, children under the age of five and pregnant women across the country. This programme received massive support from the international community but key was also the government commitment to seeing it happen, which sadly has been lacking in the reparation programme.

9.5.3.7 Government's unwillingness

The commission proposed a detailed implementation framework for implementation of the recommendations. The government however was perceived as portraying a noncommittal attitude particularly in its response to the recommendations.

"One of the things that I think was missing was government strategy to address the recommendations because the white paper that government published a few months after the recommendations was like, it was vague. It really did not show a correct and clear strategy of how can we engage with this. If you look at some of the recommendations, some of the recommendations needed like process change, others had to do with organisational assistance, others had to do with policy, ok to be honest, a committed government would have been able to take all of this, from the time the report was launched up to now. For example, look at the one where government needed to make public apology to all the women of this country. That took almost six years before that happened. So to me it is about commitment." (CSO)

The government's unwillingness has also been interpreted in its decisions not to include funds for war victims in the budgetary allocations or tax revenues from minerals. These were some of the suggestions that were proposed by the TRC to generate funds for the war victims' trust fund.

"I say, as a government, where you made your first mistake, during your fiscal year where you budget for each and, you never budgeted for the war victims. I told them that there you started making mistake, this the problem of the war victims, during the fiscal year they never budgeted for them so that is lack of neglect." (Amputee victim).

A respondent argued that because the TRC was established by an act of parliament, the government is therefore mandated to implement the recommendations. The government's agreement of the recommendations can also be implied from its acceptance of the recommendations in the white paper. It is with this understanding that they intend to go to court to get it to order the government to comply with the recommendations on reparation.

The government commitment need not only be through words but portrayed through action for instance as elaborated by one civil society member.

“What you really need to do is some concrete planning and that concrete planning has to feature prominently in your [government] annual budget ... NaCSA for example says we need \$15-20 million to get this done and then the government says every year over the next four years, we contribute five million dollars, that is how you show commitment and it is there and it goes into NaCSA’s account every year and you know that in three or four years, you’re done with it.” (CSO)

Such a level of commitment and steady flow of funds has been lacking in the programme and whereas many accept the validity in the argument that the government might be cash strapped and have many other competing demands, they also see the various developmental projects that are going on such as road constructions, schools and other infrastructure and they question where that money is coming from. They argue that if government can afford to carry out those activities then it is just plain indifference to the reparations because if it really wanted to, it could find the money for implementing reparations.

Some respondents have also argued that the government’s reluctance is because there are no potential financial benefits from reparation or what a respondent referred to as ‘kick backs’. Reparations are not ‘flashy’ or economically beneficial or have influential people to drive it.

Additionally, the victims are also not considered a threat, whether politically or physically. One respondent argues that as long as the victims’ issue does not upset the status quo, then they will continue to be considered non-priority.

“Hey, who are the victims you are talking about? Give or take 30,000 victims. They do not vote as a block, so that is the unfortunate thing how these things are done. As long as it is not an election issue, as long as it is not going to cost anyone a parliamentary seat or indeed presidential elections, it is not going to be top on the sort of priority list of the government.” (CSO)

This argument was also raised in reference to the treatment of ex-combatants whose DDR programme was swiftly executed so they do not threaten the ensuing peace. Victims however do not carry such similar threats.

9.5.3.8 Post-TRC institutions

Once the mandate of the TRC came to an end, there was no option of continuity either for the commissioners or follow up post TRC institutions to spearhead the follow-up and implementation of the recommendations.

“There was nothing like a working committee after the TRC report had been finalised to follow up on the recommendations. You know what am saying, because the TRC, when they had just published the report, that was when the whole commission of the TRC, that was when their mandate expired. I think that was the very big mistake, all the commissioners disconnected from the entire process and they were not there to see the fruit of their labour. I think that was the very first problem we had.” (CSO)

It would therefore act as a form of continuation of the TRC as well and would serve as a post-TRC engagement.

“Post TRC engagement will give you the opportunity of meeting some of those who would have appeared to give testimony but could not because of the apprehension. Victims or perpetrators, particularly will have the audacity after so much time this has happened to their companions, nothing has happened to them, they will now come and relate their stories.” (Former commissioner)

When the follow-up committees were eventually formed, they remained fragmented and focused on individual organisational goals. The follow-up role was an extra responsibility that they took up rather than an activity that required their full and undivided attention.

“There was a TRC working group set up ... they lost interest in the entire process. The problem is these TRC working groups, these are civil society organisations coming together and leading themselves ... they were working in diverse directions. (CSO)

A viable option proposed by the former chairperson of the commission which did not take effect was the establishment of a centre to act as a platform to continue monitoring the political situation in Sierra Leone and the continent. Such a centre would facilitate networking among societies facing similar challenges.

“Nationals to come and write about their political situation and international perspective, what is it we are doing in Africa that is not

bringing about the desired peace? We do not have that centre here, we only have civil society, NGOs, workshops ... and then they write fabulous reports, here and there, that is all, no follow up.” (Former commissioner)

The centre would also act as a follow up structure to keep track of the commitments proposed in the report rather than leaving it all up to the civil society. It would also foster dialogue between “*personalities and parliamentarians and government officials*” to facilitate processes to prevent the recurrence of wars.

9.5.4 Key concerns about the TRC and implementation of reparation

Below is a cross section of issues raised regarding the truth commission and the implementation of the reparations process.

9.5.4.1 Localness of the TRC

Some of the respondents expressed their doubts about whether the concept of the truth commission was locally embedded and whether the need for such a mechanism originated from the communities themselves.

“TRC itself I think I don’t know if it was a home grown idea or if it wasn’t thrust on us by the wider international community you know, so in terms of the understanding of the gravity or the importance of it may not have sank through or gone right through or permeated because if it was home grown idea in my opinion, much would have been done in that direction.”
(Member, Relics and monuments commission)

The amputees also expressed similar reservations about the TRC although the reason for their initial boycott of the process was due to perceived maltreatment from the government and organisations while in the Amputee camps.

9.5.4.2 The TRC and the Special Court

From the discussions, the TRC and Special Court were perceived as competitive rather than complimentary mechanisms as envisioned for Sierra Leone. The TRC was viewed as a “*restorative means of providing justice and closure to the victims*” while the special court was “*a retributive mechanism which said that there can be no peace without justice*” (CSO). In much of the post-war discourse, these two mechanisms are seen as

having different aims and therefore what is expected from each of the mechanism is different. There is somewhat an aloofness towards the special court with a *'let them do their job'* attitude in prosecuting the perpetrators who bore the greatest responsibility. The truth commission, despite the questions about how local it really is, is viewed more as a closer to the grassroots initiative with the herculean task of achieving reconciliation. A lot of the discussions on the commission often began with the respondent questioning if the commission had in fact reconciled the nation.

In terms of funding, the Special Court enjoyed a considerably higher budget averaging about \$30,000,000 a year (Gberie, 2014). The funding issue alone created the impression that, *"there was more premium put on special court"* (Former commissioner). The TRC on the other hand suffered delays and limitations to its influence because of inadequate funds. Despite this imbalance, there were higher expectations from the TRC as explained by one respondent.

"The TRC was to magnetically draw all those people who were either afraid to come out or for some reason did not want to come out ... a lot of focus was put on it because it was day to day stories, listening to people who you know, who you heard about, coming in testifying I did this or so and so, I am sorry I did this, this was done to me and in a way what was going on, things really were being revealed ... Special Court was going on smoothly because you had high profile people being indicted and giving evidence, so in a sense the TRC became neglected whereas TRC was the main vehicle for the country to forge ahead, to move ahead." (Member, relics and monuments commission)

It was also argued that the partiality for the Special Court over the TRC had an impact on the TRC achieving its objectives and having its recommendations implemented because if the focus had been on the TRC, then either an equal or more money would have been spent on the TRC rather than the Special Court.

"The main problem as far as I am concerned was the emphasis was put on the special court as opposed to the TRC ... when you think of the number of millions of dollars, the amount of millions of dollars was spent on the special court to get one, there might be five, six, seven, eight major players ... this has cost us of course ... over \$ 100M. We have a TRC which recommends a healing of the country and actually it did not spend that much money on the TRC, you see? And then because the nature of the TRC was such that or the nature of the country at that time was that we had

to get those people out of the bush and get them back into society so they were the first beneficiaries and then there was not much money coming in after that, so it's only now that the victims are getting their redress or compensation.” (Member, Relics and monuments commission)

On another level, there was suspicion created about the purpose of the TRC, particularly in their aim of constructing a narrative of events. It was viewed as a means for collecting information for the special court.

“To a large extent, it [Special Court] prevented so many people to appear before the TRC because some of the people consider the TRC, which originally people were happy to have, once TRC was established, they consider it a conduit that we were meant to gather information and pass that information on to the special court. And by sheer historical accident, their premise they established was just a few yards away from the premises we finally secured for our TRC so they tell me there is an underground tunnel.” (Former TRC staff)

The rumour of an underground tunnel between the TRC and special court continued to persist even after the end of the commission because it was roughly seven years later that I was in Freetown and some of the respondents still hinted at this fact during the interviews.

The relationship between the two mechanisms and later with the reparations remained strained mostly because the amount of funds which was provided to the special court. The overall perception was that once the special court was set up, attention shifted away from the TRC to the special court. A significant amount of resources went into the special court to try not more than 12 people while the majority of the perpetrators were out there free and the victims continued to suffer without redress.

9.5.4.3 Role of the international community

The presence of the international community was strongly felt in post-conflict Sierra Leone. Many of the programmes, whether reconstruction, institutional building or victims and perpetrators issues revolved around donor funding and international organisations. The choice of which transitional justice mechanism was also strongly influenced by the international discourse.

One respondent cited the sense of powerlessness of the incumbent governments or political players when they have to rely on external sources of funding. Ultimately the programmes that get done are predetermined by the donors.

"If I'm gonna go and source for money as a government, I'll have to justify the money and maybe the guys that give me the money will say 'hey so so so, this is what happens, clear this out, clear that out' you know" (CSO).

"He who pays the piper calls the tune. Those who were paying the piper felt that bringing Charles Taylor, Foday Sankoh and all those people would create more of an impact on the African continent than some of the Sierra Leone's problems internally." (CSO)

The DDR, TRC and Special Court all received a large portion of their funding from international aid. Similarly, the reparation programme that was kick-started in 2008 was almost entirely donor funded and it is an accepted fact that without international fund they would never have been able to establish a reparation programme. However, the international community has been described as thrill seekers, looking for the next action.

"The international community ... [when] the war ceases, to them that is the end They will record that. That we spent so much money, we sent so many people, the war has ended, peace has come. Whether it is superficial peace that has come or it's different, it's not their business. They feed their record that they did this one. They focus their attention to some other areas." (University professor)

A section of the respondents have however also blamed the government for not 'striking while the iron is hot.' They argue that whereas the government is dependent on donor funding, they are in a position to prioritise areas to which such funds can be utilised and unfortunately reparation did not feature as a priority. For instance, one respondent felt that the government should have spearheaded a drive to attract funds into the victims' trust fund right after the TRC completion, while the excitement was still high.

"The government was late in establishing the war victims' fund, only last year. That was a minus on the part of government, the previous government they failed to establish the war victims fund when the

situation was so right at that moment where international [community] would have come in to chip in.” (Former TRC staff)

The relationship between the international community and government is somehow complex but the prevailing attitude was that one cannot expect the international community to show an interest in the reparations programme when the government itself is not prioritising it.

9.5.4.4 Corruption

Although not explicitly referred to as corruption, a number of respondents made references to irregularities in conducting the reparation programme which could be construed to imply corruption. With regard to the trust fund and its composition, one respondent for instance remarked that, *“this is Africa. What I know is that when it comes to this monetary aspect, some senior affected victim will arise [to claim to represent the victims].”* (CSO)

Although none of the respondents could support their assertion concretely, they nevertheless insisted that a number of the beneficiaries were false. On a number of occasions when I inquired about the number of beneficiaries, the response was that, *“some of the beneficiaries are those who were never supposed to be beneficiaries.”* (Amputee victim)

The issue of corruption was also brought up in the registration exercise and disbursement of funds where it was viewed that some of the beneficiaries were not genuine victims of the war but had managed to manipulate the system to get in.

Corruption was also implied in the allegations of the chairman of AWWA in which case he cited exorbitant medical costs that are purported to be paid by NaCSA for the treatment of some victims and he is of the view that such bills are inflated and NaCSA is in cohort with some doctors and hospitals to benefit from such services.

9.5.4.5 Reparations and development

In Sierra Leone’s case, the reparation recommendations had a strong social services provision component. The key being priority for the victims for such services. In general, a number of the respondents did express their concern over what they

referred to as *'conflating transitional justice or reparation issues with development'* given the Sierra Leonean context characterised by inadequate resources, widespread poverty and competing developmental demands. A development oriented reparation programme with prioritisation of victims nonetheless tended to be more acceptable. Such a programme would facilitate the victims in accessing services which they would have been constrained in receiving due to their situation. By prioritising them, they were being acknowledged, given the recognition and assurances that the state is doing something to respond to the violations they suffered.

The most significant component in the reparation-development discussion is in the timing. The argument is that a reparations programme is *"time bound and specific."* Reparations need to be carried out when and how they are supposed to be carried out and not delayed and incorporated into other programmes which may resemble the earlier proposed reparations components. Even if it is the same benefits that are being awarded at a later date, it cannot be referred to as reparation. Delays and incorporation into a national development strategy makes the reparation aspect lose its essence.

"If somebody has to receive X amount of Leones because he or she lost a limb, that person must receive it. If she doesn't receive it and three or four years down the line a government sort of adopts a policy that says everyone must receive X amount of money every month and that would include victims of the war. Even though the victim of the war will receive that money but it does not exactly mean the same to him or her if she or they had received that money as part of a reparation programme ... if those [reparation] issues are not addressed effectively now, ultimately all of these issues will now be addressed as part of development issue." (CSO)

The above comment was prompted in part by the passing of legislations and policies that provide similar benefits as was recommended by the commission to all citizens who qualify. An example is The Persons with Disability Act in May 2011 which for instance proposes certain rights and privileges to persons with disability such as free education, medical care, and non-discrimination, among others. The amputees automatically qualify in this category but if at all they receive any benefits under this act, it is not specific to their harm as a result of the war but because of the situation they currently find themselves in along with other persons with disabilities.

The argument was that with such a benefit, it misses the acknowledgement and recognition, or as has been described by one of the respondents, the 'justice' aspect.

Similarly, some of the respondents pointed out that the 2010 free health care policy for pregnant women, lactating mothers and children under five seems like an insult to the victims. The recommendation on free health care was not implemented to the approximately 30,000 victims but the health care policy was applauded and funded by the government and international organisations to a much larger number of beneficiaries and the victims can only benefit if they somehow fall under the targeted categories of children under five, pregnant or lactating mothers. The fact that the government is able to bankroll such a programme for these categories while it failed to do the same for the victims has been interpreted as the victims not being a priority for the government. According to a respondent, free health care for the victims will probably not raise the government profile in the development indices but free health care to children under five, lactating and pregnant mothers will.

At the time of the interviews in 2012, the perception was that there is simply no incentive to set up a separate programme or body to look at reparations alone, rather the focus is on promoting development that cuts across the whole society instead of providing facilities for just one group of people. After all, the reparation proposals themselves focus on developmental issues which are of concern to the entire population and not just for the victims.

9.5.5 Proposed framework for implementation

Given that there was no methodical structure for the implementation and following it up, I sought to gain an understanding into what aspects of implementation would be considered important by respondents.

9.5.5.1 Victims survey

Much as the TRC categorised the victims and established a victims' list, it was imperative that a detailed victims' list be drawn up. It was proposed that a survey should be done to establish who the victims are, the categories of victims and their different levels of vulnerability. This should be the basis for determining who needs the most urgent assistance and what sort of assistance can be provided.

In line with the survey, a victims' registration and data bank was considered pertinent to the implementation. Such a registration exercise was carried out by NaCSA in 2008 but this exercise was widely criticised by particularly the amputees association. It was

described as a non-participatory process and not sensitive to victims' needs. The Chairperson for the amputees association for instance said they were not consulted or involved in identifying or sieving out fraud cases which meant that some individuals who made it to the amputees list were not genuine war victims. Another category that many felt could have been left out were victims of sexual based violence who might not have been as bold to come forward. As such a gender sensitive approach to registration needs to be done. A registration programme should be able to capture everyone as much as possible.

9.5.5.2 Estimated budget and funding strategy

The downside to the reparation programme in Sierra Leone was that there was no clear and steady funding source. The TRC did recommend possible sources of funding but these were not adequately pursued. The entire programme was therefore cash strapped. Based on the registration and established needs, it was proposed that the programme assesses how much money would be needed for the entire programme. Most important though is to explore how to get the money needed for the programme. Would it come direct from the government or through other fundraising activities?

9.5.5.3 An implementation structure

The respondents also argued that it was important to deliberate on what structure would be ideal for effectively implementing such a programme. Key issues identified by the respondents included for instance whether it would require regional or district offices or both? How many staff would be required? Estimated length of the programme? Differentiate between the one off benefits and benefits that would extend over a period of time. What sort of cooperation would exist between the reparation programme and routine state administration? What is the communication strategy for instance to the victims, public, government and other partners?

According to NaCSA, the key is in ensuring sustainability of the programme and for this, one needs the full participation and commitment of all people that are involved in the implementation of the reparations programme.

NaCSA stated that they continue to engage with the different line ministries to work towards mainstreaming the different services recommended by the commission into the main government programmes. According to NaCSA, they have had regular

meetings, although at the ministerial level, this was not confirmed and they have not yet achieved success in this strategy.

NaCSA has continued to liaise with the previous funders, UNPBF and UN Trust Fund to end violence against women to encourage a continuation in providing funds. There is also a strategy of engaging in other specific oriented agencies to fund specific groups of victims similar to what the UN Trust Fund to end Violence against women did for the women victims of sexual violence. One such targeted organisation is UNICEF with the aim of 'persuading' them to fund services related to the children category of victims.

Conclusion

From the discussion with the respondents, there was a general consensus that the post-conflict process in Sierra Leone has remained quite superficial. A lot of it has addressed the symptoms while the rot underneath continues to fester. The situation therefore is precarious and bound to spiral back into a conflict. Immediately after the war, there was the 'forgive' discourse and it was pointed out by some respondents, there is a false belief that everything is fine. However, the disparities that catalysed the war still continue to persist and there is a fear that something small could ignite a conflict because the root causes of the civil war are not being comprehensively addressed.

In regard to reparation it seems to be a haphazard process with several hiccups along the way rather than a concerted effort at transforming the proposals into action. There is no direct commitment to implementing the recommendations but rather a strategy of merging them within the development agenda. This could work for the other recommendations but with the reparations, there is no clear distinction of which aspects would comprise reparation such as in the disability act or the policy on pregnant, lactating mothers and children under five.

Despite all the frustrations arising out of the little to non-implementation of the reparation recommendations of the TRC, there is still a strong belief in the necessity of the TRC in the context of post war Sierra Leone. The TRC was significant in giving an avenue to acknowledge victims much in a similar way as the DDR was to the perpetrators. These two mechanisms are often seen as two sides of the same coin with expressions such as "*the perpetrators had the DDR and the victims have the TRC.*" The failure of the TRC was that it did not materialise into providing tangible benefits for the victims like the DDR provided to the perpetrators.

A lot of compromises had to be made while designing and implementing the recommendations. Working with limited funds, often attached with stringent conditions on their use meant that they could not provide the whole range of services and benefits as recommended by the commission but had to adapt the recommendations in what they refer to as *interim measures*. There were significant attempts to link the activities that were being carried out to the original recommendations in the TRC.

The sample of respondents from the one category of beneficiaries I interviewed expressed their frustration at the delay in implementation. However, similar feelings of frustration over the limited reach of the truth commission outcomes could also be perceived from the general population.

CHAPTER 10. A GENERAL NOTE ON THE EMPIRICAL STUDY

10.0 Introduction

In chapter 9 and 10, the context in which the TRC and reparation programmes in Ghana and Sierra Leone operated was presented. This followed a field study in the two countries where interviews were conducted with different actors. Both Ghana and Sierra Leone share a similar path in efforts to confront past atrocities and facilitate reconciliation. The Sierra Leone TRC and Ghana NRC took place during roughly the same period, 2002 – 2004 in Sierra Leone and 2003 – 2004 in Ghana and both were presented as being victim driven. However, beyond embracing the same mechanism, the context and course that each country took remained specific to each case. This chapter will highlight the salient issues in both cases.

10.1 A tale of contrasts

Despite having opted for a similar mechanism for dealing with the past, the contrasts in the two cases could already be observed on arrival at the respective airports.

At Lungi International Airport, Sierra Leone on the morning of January 4, 2011, I got my first experience of what I later learnt was the “survival” life in Sierra Leone. What I had initially viewed as friendly welcome greetings were actually attention grabbing tactics to offer the most ridiculous services like pushing the baggage trolley for an obligatory generous tip. On the speedboat ride to Freetown, I expressed my shock at the aggression and the generic response was that the war had made everyone a ‘survivor’. They had to find whatever means they can to earn a living because there is not much to go around although the government is doing its best to rebuild the country. The second time round in October 21, 2012, I was better prepared for the hassle of getting to the capital. In Freetown, there is a constant reminder of the depths the country descended to during the decade long conflict. The bustle of the city life is interpreted as a sign of the peace that allows the citizens to eke out a living; the mentally ill wandering about are said to be perpetrators who could not cope from the trauma of the war and snapped. There is also the issue of the very visible amputees, mostly begging, that are a reminder that war victims’ concerns still remain unaddressed.

Accra, on the contrary is a picture of calm, progress and stability. The streets are litter free, there is organised infrastructure and a number of memorials and sculptures scattered about. Underneath all this however is a dark past. For much of its history, it has experienced a number of military regimes, coups and unconstitutional rule. As I was to learn, many of the locals are suspicious of foreigners, particularly those asking questions considered to be political such as the experience of the truth commission. I experienced a constant need to reaffirm my neutrality and to establish proof of my status as a researcher. On the whole however, there is also a general sense of having moved on and a concealed amusement as to why someone would be interested in a mechanism that had ended.

Beyond these physical differences, the context in which the TRC and reparations programmes took place evolved in fundamentally different ways. As seen in the previous chapters, the reasons that motivated the adoption of the truth commission tool, the role of the different actors, the framing of the reparations and the government response to the proposals remains unique to each case.

10.2 Salient issues observed from the two cases

From both the literature review and field work, it was apparent that in both cases, there was a significant difference between what the truth commissions had proposed in their recommendations on reparations and what actually happened. Moreover, neither case has benefitted from a detailed study of the implementation frameworks and statuses. In Sierra Leone, the ICTJ carried out an assessment of NaCSA activities after one year, following the release of funding from the peace building fund. This study focused on how NaCSA implemented the activities for which the Peacebuilding Fund had been awarded (Suma & Correa, 2009). A second study was carried out by the Amputees and War Wounded Association (Conteh & Berghs, 2014). Its focus was narrow and limited to the consequences of the non-implementation of the reparation on the lives of the amputee and other war wounded victims.

In Ghana, there has not been any study on the implementation of the commission's recommendations. An opinion survey was conducted following the end of the commission by CDD, however this focused on the perspectives of the victims on the work of the commission and on its recommendations.

Chapters 8 and 9 fill this gap by presenting an empirical overview of the context in which the truth commissions and reparations were carried out in Ghana and Sierra Leone. In the ensuing discussion, I highlight the salient issues observed in the cases using the proposed integrated approach to studying implementation (chapter 7); these are categorised as: Pre-truth commission; Framing of reparations; Content of the reparation proposal; Frameworks for following up and implementation and, Post truth commission processes.

10.2.1 Pre-truth commissions

Ideally, this section would benefit more from a study that could have been carried out in the context in which it is happening, that is, before the truth commissions have been set up. In both Ghana and Sierra Leone, many of the individuals and organisations that had been involved with the process of setting up the commission had either moved on or did not exist anymore. It therefore misses out on the passion and drive that motivated the selection of the truth commission mechanism. It is also during this period that a systematic study into the position of the government could be carried out given that truth commission rely heavily on government support for their existence.

In both cases, the majority of the respondents answered that they perceived the truth commission as a necessary tool in their given context in response to the question on whether the TRC was necessary. For the case of Sierra Leone, the civil war and its devastating consequences on various institutions, property and lives coupled with the negotiated Lomé agreement that prioritised the ex-combatants stimulated the need for a victim oriented mechanism. The only point of concern raised by some of the respondents was that there was a limited attempt to incorporate local community based conflict resolution and reconciliation mechanism into the process, an oversight that limited its local impact.

In Ghana's experience, there were more divergent views as to the necessity of the commission. The proponents cited the legacy of human rights violations by various state apparatuses and institutions as well as the indemnity clauses that restricted mechanisms for redress. The dissenters on the other hand argued that much as the violations occurred, it could not be considered as wide scale. The number of victims was also not overwhelming and as such, existing mechanisms could be amended to accommodate the process. From the discussions however, the basis for their disagreement seemed to stem from the political nature of the truth commission

process. They did not agree with how it was owned by one political group and perceived it as being used to achieve political aims.

It is also important to note that in Ghana, a period of ten years had elapsed after the transition from military rule and it was actively working towards instilling good governance and democratic institutions and practices. Ghana was also already engaged in rectifying some of the wrongs, notably restitution measures consisting mainly of property returns to the legitimate owners. The assumption held by some of the respondents was therefore that the people had moved on. This was also evident in my interactions while in the field where a number of individuals were not conversant with the NRC process that had taken place.

Despite the disparity in how the truth commission was viewed, the two cases adopted a long term approach of tracing the roots of the violations to historical events and not view them as isolated events. The respondents in both cases emphasised that structural arrangements that facilitated the violations would need to be understood as well as outputs that would address these structural violations.

In terms of the existing agencies that drove the agenda of the truth commission, both cases experienced vibrant civil society presence and advocacy. What varies from the discussion is the role that they played in setting the agenda of the commission. From the discussions, ICTJ played a significant role in organising the process in both countries. A noticeable difference in the two cases however that was whereas in Ghana, local civil society felt that they had played an active role in that they owned the process and pushed it forward include in the drafting of the NRC Act.

My impression from the Sierra Leonean experience however, was that the civil society felt a bit side-lined in the peace negotiations and designing of the TRC Act as they had to operate in what had already been decided upon. Nonetheless, they still expressed that they were still instrumental in the direction that the negotiations took, specifically in incorporating victims' issues into the agenda.

In Ghana, I found that during the interviews, a number of the respondents talked about the mandate of the NRC and its focus on reparations. Through their advocacy, civil society ensured that reparation was an important component of the transitional process. In Sierra Leone, there was hardly any reference to the TRC Act during the discussions, except for one respondent, a former staff of the TRC who wanted to clarify

on the approach that the TRC took regarding reparations. He explained that despite the TCRC Act not mentioning reparations, they interpreted phrases such as “*responding to the needs of victims*” to mean reparation measures.

10.2.2 Framing of reparations

There was no significant difference in opinion between the responses from the field and the literature regarding the factors that influenced the framing of the reparations. The former TRC staff reiterated what was already in the report concerning victims’ needs and drawing on human rights principles to influence the reparations agenda.

In Ghana, the emphasis was on the outreach programmes explaining the meaning of reparations and how they would be symbolic and token to acknowledge the suffering of victims. The Sierra Leone case on the other hand emphasised the socio-economic situation and the framing of reparations to improve access to services and better the lives of the most vulnerable in a manner that would not exacerbate divisions in the community.

Both cases also emphasised the framing of reparations in a context which would make them more attractive to implement by the responsible government. Much of these views on how to frame reparations were also expressed by the civil society.

My perception is that this approach to the way reparations are understood and framed was largely influenced by the interactions with the advocates of the transitional justice paradigm. Both civil society members and staff of the truth commissions pointed out how they had participated in a number of conferences, workshops and trainings as well as interacted with members from other commissions that had already taken place, notably South Africa.

10.2.3 Content of the reparation

From interviews, it showed that both the former truth commission staff and civil society were knowledgeable about the context of the reparation proposals and in general agreed with the format of the reparations that had been proposed. This was not a surprising finding given that both the parties had been instrumental in determining the final output.

Among the victims however, in Ghana, the emphasis seemed to be on the monetary compensation. Their views regarding the reparation programme was contextualised through the monetary payments by observing that either it was enough or not enough.

Additionally, from the description of the outreach activities, much as the issue of reparations as tokens of recognition was emphasised, the highlight still remained on getting the victims to accept the monetary compensation as a token. I also suspect that the victims' focus on the monetary payments was because this component of reparation programme had already been carried out and was therefore more publicised.

Among the victims in Sierra Leone, there was a general awareness of the different forms of reparation. I generally inquired what they knew about the reparation recommendations and they were aware of the list of benefits and the categories of victims to benefit from the specific reparations. My interpretation from this could be that the category of victims that I focused on, that is the amputees and other war wounded, were one of the most visible and have had more interaction with civil society groups and are therefore able to pick up on these issues as well. Secondly, this knowledge of the content of the reparation programme could also be attributed to the outreach programmes that popularised the recommendations. The AWWA had also recently upped their game to become more involved in advocating for the reparations and so they had to be aware of what the reparation programme entails making the members more aware of the programmes.

As with the framing of reparations around victims' needs and in a manner that would make them more acceptable to the government, the content of the proposals reflected the efforts of the commissions in attempting to make the proposals as reasonable as possible to the government and not particularly strain the budget.

In both cases, the former truth commission staff pointed out that they did not anticipate that government would not implement the recommendations. In Ghana's case, the commission even estimated how much a reparations programme for the monetary compensation would cost while in Sierra Leone, the emphasis on building on existing programmes was drawn through consultation with the programmes already in place. I was however taken aback by the fact that the ministries I visited in Freetown were unaware of the content of the reparation or the specific aspects their ministry was concerned with.

10.2.4 Frameworks for following up and implementation

The Ghana NRC and Sierra Leone truth commissions differ in their approach to recommending an implementation framework. The NRC did not consider it its mandate to propose an implementation framework but rather only make recommendations to the president and in this aspect consider their mandate fulfilled. As pointed out in the previous section, they emphasised that they did not foresee any reason why government would not take up the issue of implementation.

Other respondents, particularly civil society were more doubtful of such a framework without a monitoring component. One of the respondents for instance questioned how such a system would work when there is no institution or body to monitor and remind the government of their responsibilities. He attributed the slow progress in implementation to the absence of frameworks for following up the recommendations. A number of the respondents however argued that instead of focusing on the existence or not of frameworks, the focus should rather be on the achievements and in the case of Ghana, it could consider the payment of the monetary compensation as a success.

Ghana's open framework proved to be advantageous as they did not experience the bureaucratic hurdles while setting up a follow up and implementations committee and according to one of the members, it was not a complicated process.

On the contrary, discussions in Sierra Leone indicate that setting up the implementation framework was and is still a complicated process involving legislative decisions. The TRC justification of affiliating reparation into existing programmes was to ensure they are easily incorporated and it was assumed that it would be less costly than attempting to set up new bodies. However, as seen from how long it took before NaCSA and HRCSL were approved and the on-going negotiations between NaCSA and the various ministries to include the reparation aspect, it seems to be more complex than they had assumed.

10.2.5 Post-Truth commissions

Both Ghana and Sierra Leone went through a similar trajectory where there was initial interest and participation in the post-truth commission phase especially from civil

society. However, seven to eight years later, it was challenging to find any CSOs or individuals working on promoting reparations.

In both cases, the respondents implied that the diminished interest in post-truth commission phase was related to the changing priorities of donors and governments. Many of these CSOs are dependent on external funds and are therefore prone to adjusting their focal areas to match the donors.

However, the issue of changing priorities also needs to be placed in context. My observation from the discussions in Ghana was that it was not so much the changing of funding priorities that changed the focus of civil society away from the issue of reparations but more the idea that reparations had already been implemented. The respondents agreed that it was not yet a complete process as a number of the activities had not been carried out, notably the symbolic reparations, however, the monetary payment had been awarded. Moreover, the change in government with the party that had initially been anti NRC taking over power, it was perceived that it was unlikely that the NRC issues would feature in the agenda.

The context in Sierra Leone appeared much more complex. Whereas all respondents expressed their disappointment at the fact that the comprehensive reparation programme had not been implemented, I did not receive an adequate response as to why reparation then was not a key point for advocacy. The amputees and other war wounded claimed that they were not considered a priority because they were not a threat to the government. Many of their members are not influential, are uneducated and unlikely to cause any chaos. One respondent from civil society backed up this claim by arguing that the threat of victims upsetting the status quo is unlikely and as such they are not taken seriously. The victims are few in numbers, and not organised as a group. In Free town where I was based, the only visible victims group was the AWWA where the chairperson estimated their total number countrywide to be around 1,000. He still had to carry out a detailed census to verify the exact number.

From the highlights presented in the above synthesis of the empirical findings, it reinforces the idea that an empirical study of the cases and processes of implementation gives better context to the process. Through observation and interviews, the researcher is able to understand the how or why certain decisions are made or took the course that they did.

Conclusion

Whereas the findings in the empirical research are not fundamentally different from the secondary data that was reviewed, the responses from the interviews and personal observation gave more context to the process and filled in some gaps, for instance in explaining why and how certain decisions were arrived at. For both cases, it was particularly useful in the analysis of the post-truth commission phase. The analysis detailed the step by step processes that were undertaken following the release of the commission reports and kick-starting the implementation of reparation exercises.

The detailed analysis also reinforces the hypothesis that studying implementation cannot be carried out in isolation of the socio-economic, political or cultural influences occurring pre, during and post-TRCs.

In this chapter and chapter 7, I structured the discussion using the proposed framework for studying the implementation of truth commission recommendations by applying it to the Ghanaian and Sierra Leonean cases. By using two contrasting cases, it underscores the generalisability and applicability of the framework in that the same variables I identified can be applied in any other context in order to understand how and why a particular case follows a specific trajectory.

As pointed out in chapter 3, there has been an absence of implementation studies for post-truth commissions focusing on what happens to their recommendations. The few studies that have been carried out have not been based on any particular framework. Given this gap in implementation research, in the next section, I analyse how the variables identified in the proposed framework for studying the implementation of truth commission recommendations on reparation measure up to the general understanding of implementation research.

PART V: TOWARDS A STUDY OF IMPLEMENTATION

“People now appear to think that implementation should be easy; they are therefore upset when expected events do not occur or turn out badly. We would consider our effort a success if more people began with the understanding that implementation, under the best of circumstances is exceedingly difficult. They would therefore be pleasantly surprised when a few good things really happened” (Pressman and Wildavsky, 1984, xx-xxi).

CHAPTER 11: UNDERSTANDING IMPLEMENTATION RESEARCH

11.0 Introduction

In 1973, Pressman and Wildavsky published a book which has been hailed as a pioneering exposition on implementation studies (Pressman & Wildavsky, 1984). In a preface to the third edition, they note that implementations tend to be more complex than imagined and, “many policies based on apparently sound ideas have encountered difficulties in practical application” (p. iv). In the book, they analyse the 1966 Economic Development Administrative (EDA) programme in Oakland where they emphasise closing the gap between policy design and implementation. Policy design and implementation should not be viewed as isolated components of a process but rather mutually dependent and strengthening the other (p. 143). They argue that more thought should be put into the actual implementation as well as taking the time to reflect upon the difficulties of implementation while designing the programme. In their assessment of EDA they hypothesise how the programme could have been better implemented. This study was pivotal in bringing the complexities of implementation to the forefront and precipitated scholarship on implementation research leading to the development of definitions, theories, variables and linkages with other disciplines, among others. This chapter will focus on briefly highlighting these developments in implementation research.

11.1 Defining implementation

What does implementation mean? At what point can we determine when implementation starts or ends? What variables are used to indicate and measure implementation? Can it even still be referred to as implementation or implementation studies when what is taking place is contrary to the stated objectives? These, among other questions, determine that it is imperative to get a clear understanding what exactly constitutes implementation and the study of implementation.

In a 1987 publication, Lester, Bowman, Goggin, & O’Toole (1987) pointed out that there is no precise specification or definition of implementation. As a consequence of the definitional issues, there is no consensus as to what exactly comprises implementation and therefore no measures, antecedents and consequences of implementation had been fully developed. They however point out that a distinction needs to be made between the characteristics of the implementation process and the outcome of policy

implementation which would clarify the specific activities that can be referred to as implementation with the aim of establishing with certainty when or not implementation has occurred.

Despite the assertion on the complexity in defining implementation, some scholars have nevertheless identified some definitions. Hill & Hupe (2009) for instance refer to implementation as “turning intentions legitimately decided upon into achievements” (p. 117) with the actual process starting from an initial policy decision. According to them, implementation can be viewed as a ‘focus’ and as a ‘locus’. As a focus, it refers to a range of activities that deal with implementation, and as a locus it concerns the interaction of implementing agencies (p. 30). The conceptualisation of implementation here is the existence of goals or objectives and activities carried towards fulfilling the said objectives.

In their earlier publications, Mazmanian and Sabatier (1980, p. 540, 1983, pp. 20-21) frame it as the processes of “carrying out of a basic policy decision”. They however focus on the policy decision originating from a statute, important executive order or court decision. The general characteristics they describe take three forms, identify the problem to be addressed, stipulate the objectives to be pursued and structure the implementation process. They also point out that implementation by its very nature is dynamic and prone to factors such as changes in socio-economic conditions and public opinion. The context within which implementation is presented here is putting into action a set of government programmes. As pointed out by (Lester et al., 1987, p. 201), a key issue in early implementation research focused on government sponsored programmes and whether they had achieved their objectives.

Moving away from implementation consisting of objectives and results of the objectives, Lester, et al. (1987) argue that implementation needs to be conceptualised into three aspects – a *process*, an *output* and an *outcome*. As a *process*, this refers to the timely and satisfactory performance of the necessary tasks. This would answer the question of whether what was being set out to achieve by the means of the policy was achieved in a timely and satisfactory manner. There is however no clarification by the authors on what “timely” and “satisfactory” implies. Implementation as *outputs* refers to the extent to which programme goals have been satisfied. Again, the concept of ‘satisfaction’ and which variables or measurements would be drawn to determine that it fulfils the satisfaction criteria are not addressed in the article. Thirdly,

implementation can be looked at as an *outcome*. That is, whether there is any level of measurable change as a result of the policy or programme.

From the above definitions, the starting point for studying implementation seems to be after the setting of the goals and there is no reference to the processes that influenced how the policy goals are identified and set out. This is not in tandem with how reparation goals are determined in a truth commission setting as seen from both the literature and empirical study where various factors determine the content and framework of both the truth commission bodies and their proposals.

A closer approach however is provided by O'Toole (1986) who states that when we talk about implementation, we need to define what aspects we are interested in. He identifies two categories of implementation researchers; the restrictive group whose focus is on those charged with handling a policy, and the unrestrictive group who focus on the entire process from initial statement of policy to policy impact. The second approach presents a large scope of study while the first approach limits itself by for instance excluding some stakeholders like the actors not officially designated and the likelihood of the expected effect of the policy in the real world. In a later publication, O'Toole (2000), identifies policy implementation as the range of activities that occur between the framing of a policy decision and its "ultimate impact in the world of action" (p.266). In the analysis of implementation, he emphasises on distinguishing between the actual implementation and impact on the policy, which some have referred to as impact studies (Pressman & Wildavsky, 1984).

Thus, implementation research "concerns the development of systematic knowledge regarding what emerges, or is induced, as actors deal with a policy problem (O'Toole, 2000, p. 266). In a 2004 publication, O'Toole reiterates Lester, Bowman, Goggin, & O'Toole's assertion that there is still a lack of theoretical consensus on policy implementation debates. Various theories and variables abound to explain implementation results and yet there is a gap between scholars and practitioners (O'Toole, 2004).

Similarly, Van Meter & Van Horn (1975) capture the unpredictable and nonlinear characteristics of implementation. They view it as "actions by public and private individuals (or groups) that are directed at the achievement of objectives set forth in prior policy decisions. This includes both one-time efforts to transform decisions into operational terms, as well as continuing efforts to achieve the large and small changes

mandated by policy decisions” (p. 447). When talking about implementation, the first requirement is the existence of the particulars, whether goals, objectives or recommendation that need to be effected are in place. These are the impetus for the implementation and it is when these have been established or identified that the implementation phase starts (Van Meter & Van Horn, 1975).

Although Van Meter & Van Horn also focus on the policy objectives as their starting point, they add in the component of the influence of different actors in the implementation process and not just the specific groups mandated with the implementation.

In this maze of debates, whereas there may not be a consensus on the exact definition of implementation, the general interpretation is of transforming goals into action. There is however some disparity on which stage the focus of implementation research should consider. Schneider (1982, p. 716) and some of the scholars discussed above for instance consider implementation as processes from policy adoption to routinisation of operations, activities or tasks governed by the policy. In Schneider’s description there are definite start and end times for implementation. Some definitions however are broader such as O’Toole (1986, 2000) and consider the elements that informed the policy and the impact of a policy on an existing situation as well.

In this dissertation, I lean towards the broader conceptualisation of implementation when applied to the implementation process of truth commission recommendations. This is because various factors contribute to the design of the recommendations and as such, these factors can play a critical role on the policy outcome. This reiterates the findings from the literature analysis and perspective of respondents from Ghana and Sierra Leone in the empirical study who argued that in order to better understand the implementation of the reparations, it was important to factor in the debates, activities and the entire context that prevailed before, during and after the drafting of these recommendations. A study of implementation needs to critically assess the circumstances occurring in the context of the design, defining goals as well as the output. As such implementation research consists of understanding the processes that led to the formation of the objectives or recommendations and the transformation of the objectives into action.

11.2 Development of implementation studies

The development of the field of implementation has been classified into generations. These have been grouped into first, second and third generation categories (Barrett, 2004; deLeon & deLeon, 2002; O'Toole, 2000; Pülz & Treib, 2007; Sabatier, 1986; Schofield, 2001; Winter, 2006).

In the *first generation*, scholars differentiate between the top-down and bottom-up models. Both models are purported to maximise the probability of implementation success. Essentially, the difference between the two models is that the “top-downers” start from a policy decision reached at the top of the political system and work their way down to the implementers. The central focus of the top-down approach is on the central control of the process and the “hierarchical execution of centrally-defined policy intentions (Pülz & Treib, 2007, p. 89). Thus, under this model, there are policy goals on the one hand and the implementation of these goals on the other with a linear relationship. To bridge these components, it requires the establishment of adequate bureaucratic procedures. The authors identify three variables pertinent to this process – sufficient resources, system of clear responsibilities and hierarchical control to supervise the actions of implementers (p. 91). To this end, implementation therefore implies “an interaction between the setting of goals and actions geared to achieve *the said goals*” (p. 91).

The bottom-up theorists start out with the identification of the actors involved in concrete policy delivery at the bottom, then move upwards and sideways. This upwards and sideways component, according to (Pülzl & Treib, 2007, p. 93) is in order to identify the networks of implementing actors and their problem-solving strategies.

Studies that fall into first generation, such as that of Pressman and Wildavsky focused on analysing specific cases of implementation projects and identifying variables that explain the success or failure of these implementations. These first generation studies were critical in bringing to the forefront the complexities of policy implementation although a major critique of this category is the assumption of a linear implementation framework from the top to the intended beneficiaries (deLeon & deLeon, 2002).

The *second generation* studies tended towards theorising on how to successfully implement a policy proposal. The top-down theorists in this generation focused more on the “institutional, command and control” factors in policy implementation. In this

manner, they were quite similar to the first generation linear interpretation of implementation. Parallel to the top-down approach was the bottom-up theorists who held the assumption that implementation is non-linear and dynamic and consists of a number of stakeholders or middlemen facilitating or frustrating the process. The attention of this group was on what they refer to as the “street level bureaucrats”. These theorists lay emphasis on the view that those affected by the policies needed to be actively involved in planning and execution and argued for implementation concerns to be incorporated into policy formulation (deLeon & deLeon, 2002).

Elmore (1979) in an earlier publication also discusses this concept in which he talks about ‘forward mapping’ and ‘backward mapping’ approaches to implementation analysis. Forward mapping is similar to the top bottom approach in that the analysis starts from the policy statement and traces the various stages through to the actualisation of the policy. This may include the initial policy, the administrative and structural measures and the observable effect of the initial policy on the target population. The forward mapping essentially has three steps; the objective, the specific set of steps for achieving the objective and the outcomes for measuring success or failure. Elmore however points out that the principal weakness of this approach is that it views implementation as a process in which the policy makers at the top “control the organizational, political, and technological processes that affect implementation” (p. 603).

The backward mapping takes on a reverse structure beginning with “a statement of the specific behaviour at the lowest level of the implementation process that generates the need for a policy. Only after that behaviour is described does the analysis presume to state an objective; the objective is first stated as a set of organizational operations and then as a set of effects, or outcomes, that will result from these operations” (p. 604). In prescribing a policy, the policy makers would identify a need, target, structure of implementing agencies considering their abilities and resources. They then finally prescribe a policy that meets the criteria and resources can be directed at those organisational units most likely to succeed. With the backward mapping in mind, Elmore argues for a more extensive implementation analysis that goes beyond the rigid top-bottom hierarchies but that puts into consideration among others delivery level decisions which determine the effects of a policy such as accessibility, availability and willingness. These usually are decisions which “cannot be standardised, managed or controlled using conventional administrative tools” (p. 614-615). This arguments puts

to the fore the role of street-level bureaucrats who usually are the interface between the beneficiaries, policy makers and the policy itself.

The debate about the direction, whether top-bottom, bottom-up or backward and forward mapping however no longer carries much impetus as there is consensus between the various authors about the importance of various variables within the implementation framework irrespective of whether they are at the top, centre or bottom (O'Toole, 2000; Pülz & Treib, 2007). These studies have generally been referred to as *third generation* studies (Goggin, Bowman, Lester, & O'Toole, 1990; O'Toole, 2004). These studies focused on implementation research being more scientific, "They sought to explain why behaviour varies across time, across policies, and across units of government and by predicting the type of implementation behaviour that is likely to occur in the future" (deLeon & deLeon, 2002, p. 471; Pülz & Treib, 2007).

As pointed out by O'Toole (2004, P. 322), implementations can sometimes tend to be complicated. He states that, "Implementation settings in the real world typically face considerable uncertainty and complexity, particularly in networked contexts and especially at the initial states of implementation, when routines for interaction are not yet in place, modes of coordination and many aspects of implementation action are under negotiation, and considerable learning must take place."

Such a perception is useful in connecting the differences between first generation, second generation and third generation or between top-down and bottom-up which have been likened to two sides of the same coin (O'Toole, 2000). As such, the decision on whether to use top-down or bottom-up should be determined by the context of the policy design and implementation, and employ a strategy of comparative advantage. For instance where there is no authoritative top or effective central regulatory regimes and there exists only a "skeleton secretariat", implementation could benefit from bottom-up analysts who could "indicate ways of mobilizing stakeholders outside the official apparatus to lend legitimacy and catalyse effective collaboration." Conversely, a bureaucratic top-down approach could suffice where there is uniform action, stable circumstances and possibility for sanctions for noncompliance (deLeon & deLeon, 2002, p. 318).

Furthermore, in implementation, there are multiple channels of influence and perspectives that could determine the actions of the various participants or stakeholders along the line as well as the final output. deLeon & deLeon (2002) have

suggested what they refer to as a “democratic approach to policy implementation” (p.483) which encompasses a more vibrant participation and inclusion in the policy formulation before it is adopted.

11.3 Variables for measuring implementation in implementation research

The increasing interest in implementation research through the 1970s and 1980s saw the production of a number of variables to explain implementation (O’Toole, 2000). With all the number of variables floating around, it becomes difficult to determine which ones are crucial and relevant towards implementation or which set would work better in studying implementation (Pülzl & Treib, 2007; O’Toole, 2000). In fact Meier, as quoted in O’Toole (2004, p.315; 2000:268) has suggested that any new additions of variables should be backed by the removal of two existing variables to reduce the congestion and duplication of variables. Despite the large number of variables, there appear to be more similarities among them than differences with simply different areas of emphasis. As such, the following section briefly explains three frameworks from Van Meter and Van Horn (1975), Mazmanian and Sabatier (1980) and Mazmanian and Sabatier (1989).

Van Meter & Van Horn (1975) create a model to explain programme performance or “the degree to which anticipated services are actually delivered” (p. 449). The conceptual framework seeks to examine “factors that contribute to the realisation or nonrealisation of policy objectives” (p. 448). They agree that implementation studies are complex with a number of methodological difficulties such as defining actors, boundaries and variables. Implementation analysis also requires long term study of multiple actors which can be strenuous in terms of time and resources. This often puts off scholars from embarking on it.

Van Meter & Van Horn propose six variables that affect the implementation process:

- (1) Policy standards and objectives: These define the goals of the policy. Some of these have measurable and visible outcomes for instance the number of jobs or construction of specific projects while some cannot be easily quantified. The policy documents themselves may contain criteria for evaluation or these criteria may have to be determined by a researcher.
- (2) Policy resources: The assumption is that once a policy is decided upon, the resources to transform it into action are made available. The availability of resources and other incentives is critical to whether or not implementation takes place.

(3) Inter-organisational communication and enforcement activities: This concerns the question to what extent a programme's standards and objectives are understood by the implementers.

(4) The characteristic of implementing agencies: What are the "formal structural features of organisations and the informal attributes of their personnel?" (p. 471). The relationship of the organisation to other stakeholders may affect the implementation process.

(5) Economic, social and political conditions: What are the influences of these aspects on the implementation process and outcomes and on the performance of the implementing agencies?

(6) The disposition of the implementers: What is the perception of the implementers towards the policy? How much do they understand the policy or their role and what is their view of it "(acceptance, neutrality, rejection) and the intensity of that response?" (p. 472).

This model was however not empirically tested by the authors. The proposed variables nevertheless appear relevant in explaining why implementation happens the way it does but also as specific variable that can be used to enhance the implementation process.

In 1980, Mazmanian and Sabatier proposed a framework which they hailed as "generally more comprehensive and specific in its identification of variables, particularly with respect to the manner in which statutory characteristics affect subsequent events" (Sabatier & Mazmanian, 1980, p. 538). In this framework, they aim to "capture the dynamic nature of implementation" by illustrating the effect of the interactions between the "socio-economic conditions, public opinion, and other factors" on the implementation process. In total, they identify 17 variables clustered into three groups:

(1) Tractability of the problem being addressed by the statute: The authors argue that the level of difficulty presented by a problem is a determinant of how it will be dealt with. In general some problems are much easier to deal with while some complex social problems present greater challenges.

(2) The ability of the statute to favourably structure the implementation process: The basis of the policy to be implemented is the statute and the assumption is that the statute is comprised of clear and consistent objectives and a sound theory of behaviour change in order to effect change.

(3) The non-statutory variables affecting implementation: The authors characterise these as the “non-legal variables affecting the policy outputs of implementing agencies” (p. 549). They point to variables such as mass media and public support which can facilitate or hinder the development of a programme.

These variables generally seek to explain why implementation has occurred or not and the premise of this framework is that these variables affect the ability to perform and achieve the objectives of the policy. One of the strengths captured in their analysis is the emphasis on the interaction between the statutory and political variables in the implementation process, an element that is not only limited to decisions with a legal backing.

The limitation of the Sabatier-Mazmanian framework however, is that it leans strongly on statutory policies which they refer to as “traditional regulatory policies in which government agencies seek to alter the behaviour of private target groups” (p. 539). Their emphasis on the capacity “of a statute to structure the implementation process” (p. 540) leaves out processes that are not backed by a statute. This model is also framed in the context of aiming to regulate the behaviour private target groups by imposing a combination of obligations and, or conditions such as legal directives or requirements for disbursement of funds (p. 539). It would therefore be more useful before and during policy implementation rather than post implementation.

In 1989, Mazmanian and Sabatier revisited and reiterated the arguments they had earlier raised. They argue that implementation analysis is caught between two extremes; the practitioners who seek more practical answers to the question of implementation such as what needs to be included or excluded for a programme to work and what can they do to get the programme moving. The social scientists on the other hand are more theoretical and seek to explain the implementation process through a myriad of social, economic and political circumstances. An implementation framework needs to be able to synthesise these two sides (Mazmanian & Sabatier, 1989). In addition to the earlier implementation framework, they stress six conditions that they consider most necessary for effective implementation. These are both a checklist for programme effectiveness and tasks to ensure implementation success.

(1) The statute contains clear and consistent policy directives.

(2) Statute incorporates a sound theory identifying the factors affecting programme goals and gives implementing officials sufficient jurisdiction to attain those objectives.

- (3) The statute structures implementation to maximise the probability of compliance from implementing officials and target groups
- (4) Top implementing officials are strongly committed to attainment of statutory objectives and have the skills necessary to ensure achievement of the goals.
- (5) The program is actively supported by organised constituency groups and few key sovereigns (legislative or executive) throughout the implementation process.
- (6) Changing socio-economic conditions over time does not weaken the statute's causal theory or political support or the priority of statutory objectives.

As in the previous frameworks, there is still a strong emphasis on the legal structure as being pertinent to the evolution of the implementation process. Whereas these variables and discussions are useful to understanding policy implementation, recommendations by a non-statutory institution such as a truth commission present a different context. In the discussions above, there is a strong emphasis on the statutory component of a policy which in effect gives validity to its enforceability. Recommendations that truth commissions make on the other hand do not have such power. They are simply proposals left to the discretion of the sitting government and other institutions and there is no legal mechanism to ensure enforceability.

Moreover, they also emphasise the need for the availability of resources and other incentives to carry out the implementation. These models are presented with a basic assumption that there is a legal and institutional framework in which they will operate and therefore approach implementation studies from the perspective that the proposed variables will ease the process of implementation. Recommendations from truth commissions however do not have this luxury. Most times, by the time the proposals are made, there is no confirmation or estimate of funds yet to come and neither are the institutions for carrying out the implementation in existence. The recommendations are made in the hope that they will get picked up and followed through or that they remain interesting enough to the different stakeholders such that they are sustained through to the implementation.

Despite the uncertainty of the recommendations of truth commission recommendations, the above variables can still be relevant to understanding the process, particularly before the design and during the implementation. As with the approaches discussed in chapter 3 for how the post truth commission recommendations have been approached within TJ, these variables are limited to addressing specific setbacks in the design and implementation. In this study, I however

argue that it is critical to understand the context in the post implementation phase, notably the socio-economic and political structures as these could have drastically changed which would as well impact on the implementation.

11.4 Application of implementation Research to Truth Commission recommendations

According to (O'Toole, 2004), the target of implementation studies is the implementers principally or 'implementation manager.' Much of the literature has therefore focused on theorising implementation such as defining what implementation is and generating theories and variables that can be used to explain whether or not implementation has or is taking place. Some of the studies also focus on the variables that influence the process of implementation and typically measure the success and impact of programmes or the implementation factors that may play a part in the success or failure of programmes. As put by Van Meter & Van Horn (1975, p.448), the "study of implementation examines those factors that contribute to the realisation or non-realisation of policy objectives." However, it is critical to acknowledge the dynamic situations that are presented in different contexts which necessitate context specific responses (O'Toole, 2004, p. 216). 'Specific elements cannot be put into place in a mechanical fashion' (Palumbo, Maynard-Moody & Wright, 1984, p. 72) as factors that worked towards the implementation success in one locale cannot necessarily be generalised to other locales. Decades of research on implementation have served to confirm that implementation is complex.

Implementation research has also expanded and is being applied in other fields other than public policy. Damschroder, Peikes, & Peterson (2013, p.1) have for instance applied it in the field of public health. They have interpreted implementation research as studies focusing on "how programs are implemented, translated, replicated and disseminated in "real-world" settings. It expands the focus of traditional research from discovering *what* works to also discovering *how* the implementation works in *specific contexts*." In this context, implementation research is used to enhance the multifaceted nature of implementation including the operationalisation, characteristics of the setting and other factors as well as the interactions between these components.

Still in the field of public health, Peters, Adam, Alonge, Agyepong, & Tran (2013) have argued that despite the confusion about its terminology and scope, implementation is nevertheless a growing field that places emphasis on the "scientific inquiry into

questions concerning implementation – the act of carrying an intention into effect” (p. 1). It is also essential for these authors that researchers need to understand what, why and how policies, programmes or practices work in “real world” settings. The significance of implementation research can be noted in the publication of a practical guide for implementation research in health (Peters, Tran, & Adam, 2013). This guide which has been designed within the context of health interventions is quite useful in connecting theory and practice of implementation as it is common that what has been visualised often falls short in reality, and this is not only limited to health interventions.

Pülz & Treib, (2007) similarly point out that the study of implementation processes has been limited to within nation states. Following this argument, they explore implementation research at the international level within the context of the domestic implementation of the European Union legislations. This discussion further reinforces the complexity of implementation more so at the international levels where the actors have to contend with policy, administrative, structural and cultural differences between the top and bottom. These dilemmas raise the question of the general applicability of the implementation models out of the context in which they have been developed.

Werner (2004) however simplifies the understanding of implementation research and frames it in a manner that can be applied in different contexts and fields. He describes implementation research as a “general term for research that focuses on ‘what is happening?’ in the design, implementation, administration, operation, services and outcome of social programmes” (p. 1). According to him, the objective of implementation research is three fold: document, assess and explain programme experiences. It therefore describes what is happening, assesses if this is what was expected or desired and thirdly attempts to explain why what is happening is the way it is. Whereas describing the programmes is pretty much straightforward, Werner (2004) distinguishes between assessment and explanation as such. When engaged in ‘assessing’ a programme, we judge “whether or not the programme or policy is operating according to some model, norm or standard” (p. 8). In this way, we look at the program objectives or goals and whether these are being fulfilled or not. In ‘explaining,’ we endeavour to generate hypotheses about why the policy or programme is operating as it is.

This discourse in how implementation has been carried out in other fields is useful in the manner that it takes a concept that has been predominantly entrenched in one field

and adapts it to suit interventions within another. It is this approach that is used in this dissertation. It utilises the understanding and concepts developed within implementation research to support the model developed for studying implementation of truth commission recommendations within the transitional justice framework where despite the recognition and interest in implementation of TJ mechanisms using standardised and scientific criteria it still remains an unexplored area.

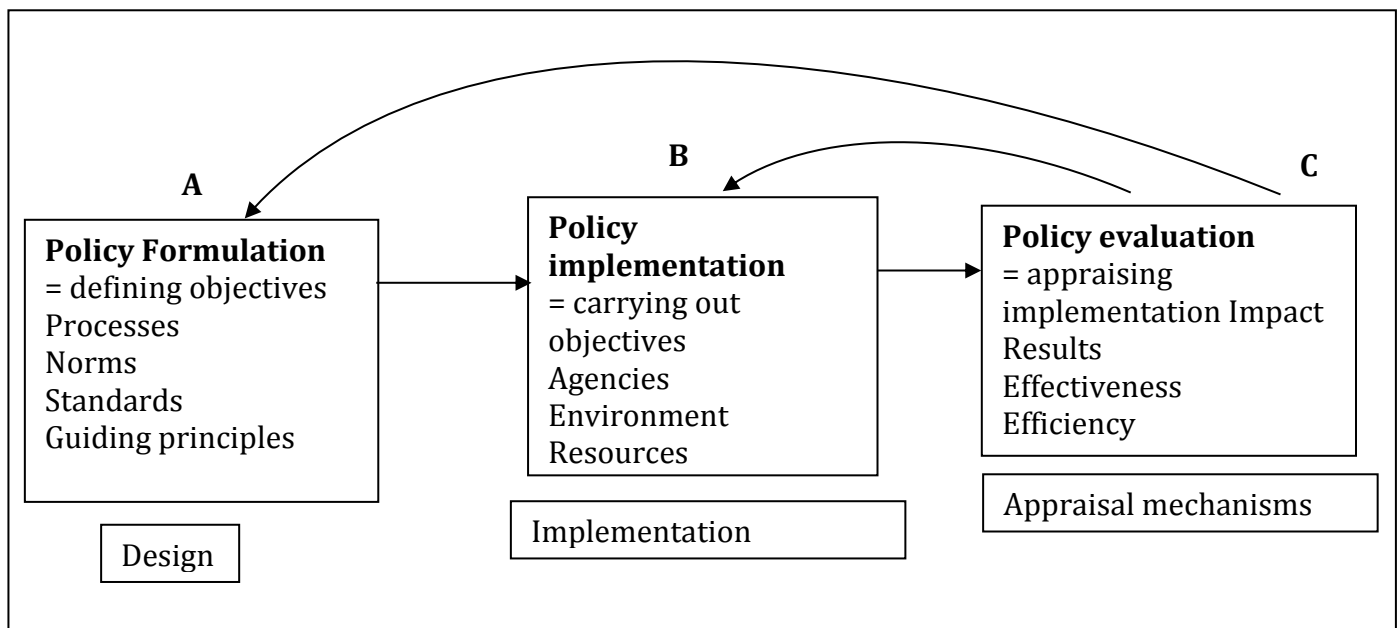
11.4.1 What aspects to study in implementation

In implementation research, some authors have argued that a critical issue to consider while studying implementation is if there is an existing programme (Schneider, 1982). Existence is determined by whether the “elements for carrying out the policy directives are present and functioning” such as people, resources and organisations (p. 718).

However, basing whether or not to study implementation on the existence of such elements would potentially exclude cases where there was an initial intention to define goals but implementation did not take off, a scenario that sometimes happens in the context of truth commission’s recommendations. A study of implementation therefore needs to move beyond the implementing agency or the output and seek to construct an account of the whole implementation account and establish connections in how each stage influences the others.

In general, there are usually three broad areas of focus in the implementation process (*figure 3*); the policy formulation, which involves setting the agenda, the policy implementation, which is the transformation of the objectives into action, and the policy evaluation which assesses the impact of the policies (Blankenburg, 1985). As shown in the figure, these are not entirely isolated parts but are comprised of a series of connections constantly restructuring the output of the other blocks. UNDP (2009) in its handbook emphasises these linkages by stressing that an effective implementation and monitoring process requires a good programme and project design while the monitoring and evaluation will feed into the formulation and implementation. All of these processes of planning, monitoring and evaluation enhance the establishment of clear links between past, present and future initiatives.

Figure 3: The implementation Process



Blankenburg (1985)

Much of the focus of implementation studies have focused on analysing the elements in part B. I find this a narrow focus because it misses out on the negotiations and compromises that bring the programme into existence. This is a view Pülzl & Treib (2007) elaborate in their interpretive approach to policy implementation where they argue that these “prior debates and policy meanings have an impact on policy execution ... implementing actors are also confronted with multiple policy meanings as policy formation frequently involves the accommodation of contradicting interest” (p. 100).

This position is particularly relevant for recommendations resulting from truth commissions because truth commissions themselves are an output of various levels of negotiations. The recommendations themselves follow an elaborate process of inputs and compromises on among others, necessity and feasibility and continuous negotiations to transform these recommendations into actions. The dynamics that go into the formulation of the recommendations are likely to impact the implementation and outputs.

Reflecting on the observations both in the literature analysis and in the field, there appear to be no standardised programmes, models or norms when it comes to implementing reparation programmes following truth commissions. Also, as previously mentioned, each of the reparation programmes are country specific and as

such seek to fulfil the needs experienced in each country which makes it difficult to generalise.

Furthermore, in the frameworks discussed in public policy, the context of many of the cases is significantly different. These are mainly statutory decisions or government policies which means that there is an implicit statutory interest. In these cases as well, there is an assigned pool of resources geared towards its implementation. The same cannot be said of recommendations originating from truth commissions. Whereas the creation of a truth commission requires official acknowledgement and is empowered by the state (Hayner, 2011), the same cannot be said of their recommendations and therefore cannot be held to the same standards as statutory decisions.

It is these considerations that influenced the proposal of a framework that could be specific to cases of studying the implementation of the truth commission recommendations on reparation. It draws on the implementation process in figure 3 and proposes five key areas of focus in studying implementation that cover the scope of the implementation process following truth commissions. These include: The context through which the mechanism came into existence (pre-truth commission); the formulation of recommendations (framing of reparation), the content of the reparation proposals, the frameworks for following up and implementing and the evaluation of the results (post-truth commissions).

11.4.2 Linking implementation research to the cases of Ghana and Sierra Leone

While unpacking the top-down, bottom-up and third generation approaches for studying implementation above, it was challenging to attempt to fit the cases within a specific model. The Ghana case could have benefitted from a top-down study because of an apparent hierarchical administration of the implementation. In this instance, a decision was made at the top to establish a reparations committee specifying the functions and in which government office it is to be located. The funds were provided and the decision on how the funds are to be utilised was also determined at the centre. Using this approach however would not result in a nuanced view of the implementation process. Despite the appearances of bureaucratic procedures, it appeared to be directed by one individual, who needless to say got the specified job done. However, it was also necessary to reach out to various networks in order to understand why and how the implementation process is the way it is since this information proved to be difficult to obtain from the one individual.

The Sierra Leone case seems to be more complicated to fit into either of the models. Whereas the recommendations originate from the top, that is the truth commission, a more interactive process to determine the contents of the recommendation took place hence the identification of a need preceded the final recommendations. The implementation, like in the case of Ghana also bears a semblance to the top-down approach. The decision to establish a reparations unit and its functions was a central decision however, the decision on funds was more complex and beyond both the government and the implementing agency. The Peacebuilding Fund that had the authority to specify how the funds should be disbursed devolved this responsibility to another organisation, IOM. Similar to Ghana, in order to understand the implementation process, the proposed framework for studying implementation calls for the study on the various networks and actors and not just the implementing unit.

The reconciliatory approach of the different models proves to be rewarding for the study of the recommendations of truth commissions. In studying Ghana and Sierra Leone cases, there seems not to be a linear path to implementation. There is a lot of backwards, forwards and sideward movements. The various decisions are determined and influenced by a number of stakeholders (such as civil society or the public) and other variables (such as resources or politics). Each case would therefore need to take into account the specific context and realities prevalent in each situation and move away from trying to fit it into a particular model.

Conclusion

This chapter presented a general analysis on implementation literature and sought to understand what implementation means. It discussed different variables that have been proposed to study implementation however the starting point for these analyses are statutory documents and decisions, a critical difference in comparison to the recommendations of truth commission which rarely have any legal backing. In a number of cases however, the implementing agencies of the truth commission recommendations are drawn from the public service and as such are guided by the regulations of the public service commission.

The discussion also shows how complex implementation is and highlights the different variables proposed for measuring implementation though these have focused on identifying features that would enhance the success of implementation. Much as the

variables can also be useful in understanding the status of the implementation they do not fully capture the complexities that are presented in programmes for which there is no statutory obligations such as recommendations of truth commissions. However, the ideas drawn from the implementation literature have been useful in supporting the proposed framework for studying the implementation of truth commission recommendations.

CHAPTER 12: FRAMEWORK FOR STUDYING IMPLEMENTATION FOLLOWING TRUTH COMMISSION RECOMMENDATIONS

12.0 Introduction

The preceding discussion shows how complex implementation and implementation research can be. Between the framing of the policy and the realisation of the objectives, various levels of negotiation, interaction between actors and systems, re-framing of definitions and expectations take place. Implementation is far from a linear process and oftentimes, the policy designers are different and so far removed from the actual implementers. Moreover, the process itself constantly changing and programmes need to be reshaped and redefined (Pülzl & Treib, 2007).

Based on the discussion in the previous chapters, this chapter analyses the proposed framework for studying the implementation of truth commission recommendations on reparation. It emphasises that for a comprehensive study, the scope for what is to be considered under 'studying implementation' needs to be broadened. This means that an analysis should go beyond the actual reparation proposals and activities that have or have not taken place to include the processes that determined the set-up of the truth commission mechanism through to the analysis of why the intended or unintended output is the way it is. As such, the purpose is not to propose variables that would contribute to the success or failure of implementation of reparations or on whether or not programmes have been implemented but rather to suggest parameters that could be applied to study the implementation processes. This would contribute to standardising implementation research for reparation programmes following truth commissions. On the other hand though, the variables could prove useful to both the designers and implementers of reparation programmes as key issues that could be taken into account during the design and implementation process.

This chapter therefore focuses on developing further the key variables relevant for studying the implementation of reparations.

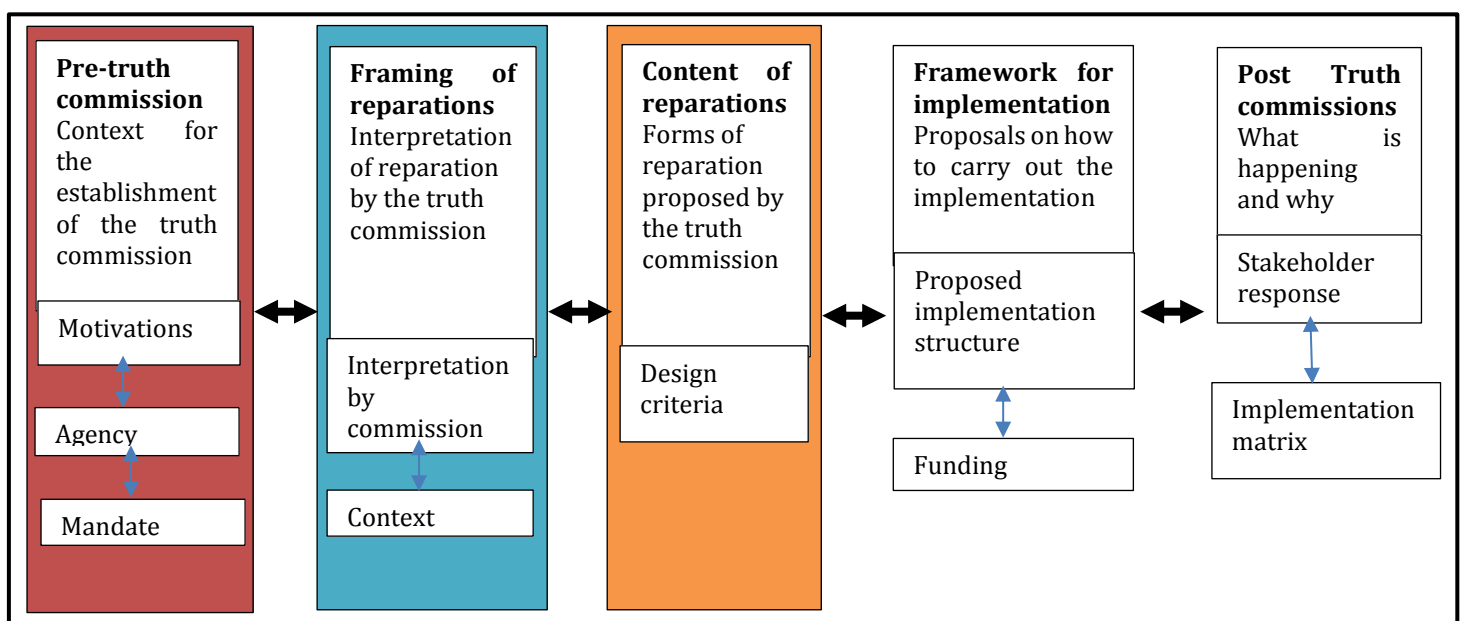
12.1 Key variables for studying the implementation of reparation following truth commissions

The discussion in the previous chapter was relevant for understanding what implementation and implementation research is and how it has been studied. I

however find that the approach it utilises does not give a comprehensive understanding of post-truth commission implementation of recommendations. It defines implementation as what is happening between the policy formulations to the policy output and as such implementation research focuses on this narrow scope. The starting point for most implementation research is the defined policy objectives or goals while the end point is the actual implementation or non-implementation viewed as the existence or non-existence of the stated goals. There is little discussion on the dynamics that went into the production of the objectives or after the implementation. The variables that are proposed in implementation research are therefore limited to understanding the processes that take place within this limited scope.

The proposed framework for studying the implementation of the recommendations on reparation however has five levels of analysis (*figure 4*): (1) Pre-truth commission, (2) Framing of reparations, (3) Content of the reparation proposal (4) Frameworks for following up and implementation (5) Post truth commission

Figure 4: A Framework for studying the implementation of reparation



12.1.1 Pre-truth commission

From the literature analysis and empirical research in Ghana and Sierra Leone, it shows that for truth commissions, the processes that exist before the establishment of the truth commission influence both how the recommendation on reparation is framed and the responses to the reparations following the end of the commission.

The factors that necessitated the setting up of the truth commission can have an impact on the question of reparations as well as how the different stakeholders potentially respond to it. The proposed approach for studying post truth commission recommendations therefore goes a step back from the proposed reparations to seek and understand the different dynamics prior to setting up of the commission.

Using three variables; *motivations* for setting up a commission, the *agency* for setting up the reparations component on the agenda and the *mandate* of truth commissions, this level analyses the context in which a truth commission was set up and evaluates factors such as the debates surrounding the establishment of the commission and whether or not reparations featured in these debates, the perceptions of different actors, the reparation needs and the ideas behind these needs and the different agencies that participated in this discourse.

12.1.1.1 Motivation

The *motivation* variable seeks to answer the question of why a truth commission was established in a particular case (7.1.1). The assumption being that the primary objectives for setting up a truth commission set the stage for how the subsequent actions and responses will follow.

From both the literature analysis and empirical study of Ghana and Sierra Leone, whereas both cases instituted the same mechanism, the reasons why it was selected vary. Ghana adopted it as a response to the indemnity clauses that had been enacted to protect the perpetrators of human rights violations during the military and unconstitutional regimes. That however does not entirely explain the timing since it took place at least a decade after its transition. The emergence of a pro-truth commission ruling party gave the impetus for its actual establishment. This political undertone pretty much summed up the entire process including perceptions towards it and how much it could achieve. Since the change in political party in 2009, there has not been significant progress nor expectations for the implementation of the rest of the reparation proposals unless as one respondent during the field work remarked, the NPP wins the election, then perhaps they might be interested in reviving what they had started.

The political undertones in Sierra Leone's case are not so obvious. However the stated objective was that the truth commission was viewed as a victim oriented approach to bring about reconciliation and healing. From the interviews, it was described as a victims' version of the DDR. This was because of the over emphasis on the combatants during the peace process. This is evident in the limited mention it got in the peace negotiation documents although a number of the respondents also pointed out that the victims were not the priority during the peace negotiations. It was the combatants and ex-combatants who posed a real security threat. This refrain about victims not being a priority in the peace process continued to be a significant perception in the truth commission process and stretching into the responses to the recommendations for reparations. Although there were mentions of politically motivated peddling, these were not substantiated enough to establish causality between the outcomes and political influence.

12.1.1.2 Agency

In considering the variable of *agency*, it hypothesises the connection between the key actors that pushed for the setting up of the commission and thereafter, the inclusion of reparations on the agenda and the support towards ensuring that implementation is carried out (7.1.2). Was it local, international or a mixture? Often, the influence of the agency in ensuring a sustainable process where the set goals are realised is linked to their motivations for getting involved in the truth commission process in the first place.

From various TJ experiences, civil society, both local and international have often taken the lead role in advocating for truth commission processes. In cases where robust implementation of the reparations have taken place such as in Argentina and Chile, many of these organisations were locally driven with a stake in the process, mostly because they were composed or facilitated by the victims.

In Ghana's case, much as the lead civil society groups advocating for a truth commission were local, they did not emerge in the context of truth seeking. The lead organisation, CDD's core programmes were in the promotion of democracy and good governance. With the withdrawal of the ICTJ, it reverted back to its core programme areas and at the time of the field work, it was not as an organisation in following up the rest of the reparation proposals.

The sitting government was also a strong agent in supporting the establishment of the truth commission. After all, they had used the idea of a national reconciliation commission as a campaign manifesto. Having won the elections, the NPP facilitated the process in terms of funding and political support in setting it up.

Similarly, in Sierra Leone, civil society emerged in the context of post conflict reconstruction, addressing a broad range of issues mainly in facilitating a peaceful end to the conflict and in social service delivery. This was not only specific to victims. The victims in the interviews mentioned the large numbers of NGOs that worked with them while they were in the amputee camps however these also provided basic services. During the peace negotiations, particularly the Lomé agreement, civil society was also included however as pointed out by some of the respondents, this was mainly an observation role. As such, despite their presence, the truth commission was co-opted into their programmes rather than the drive for their existence. Likewise, much as the truth commission in Sierra Leone was considered a critical element of the peace and reconciliation process, it did not emerge as a principle element of the agents but rather as a subset of the bigger peace and reconciliation programme. As described by one of respondents, the events that followed after the Lomé agreement created the impression that the TRC and victims issues was not considered “premium.” It is these responses that were carried on into the post-truth commission implementation phase where while everyone acknowledges the importance of victim issues, there is no one taking specific responsibility to ensure that they are met.

12.1.1.3 Mandate

The third variable of the *mandate* analyses how the issue of reparations is addressed in the terms of reference of the commission (7.1.3). How is the issue of reparation framed? The motivations for establishing a truth commissions and the interactions and discourse between the different actors or agents can play a role in how the issue of reparations is defined. Where the references to reparations are vague, then the mandate will likely reflect a vague approach however, more defined conversations on reparations prior to the mandate and likely to result in more specific references.

In both the literature and empirical study, there was little information into the processes of how the mandate was drawn up. However, between the two cases of

Ghana and Sierra Leone, there were more structured and persistent effort from the CSOs in Ghana concerning the drafting of the NRC mandate, including the content.

As has already been discussed elsewhere in this dissertation, Ghana's reference to reparations in the NRC mandate was more specific and direct while the Sierra Leone TRC Act did not specifically mention reparations but made references which were subsequently interpreted as reparations by the commission. In the interviews in Sierra Leone, there were hardly any references made to the TRC mandate while the discussions in Ghana, particularly with the CSO members invariably pointed out that proposals for reparations were contained in the NRC which were then further elaborated on in the NRC.

The *motivation*, *agency* and *mandate* generally set the tone for the commission's experience and the outcomes in terms of implementation. The debates and decisions in this context influence the shape the implementation will later take in terms of the processes, structures and relationships. An analysis of these dynamics can be of value in unpacking subsequent decisions and responses in designing of proposals and their implementation.

12.1.2 Framing of reparations

In the second level of analysis, a study of the implementation on reparation would consider how reparations are framed. It addresses two variables; how reparations were *interpreted* and *defined* by the commission and the *context* that influenced the shape of the reparations recommendations. This level of analysis draws attention to the reasons behind the framing of the reparations recommendations. From this study, the general idea behind how reparations are framed is to make them as easy as possible to potentially be implemented.

12.1.2.1 Interpretation of reparations

In the first aspect of how reparations were *interpreted* and *defined* by the commission, already in 2.2.3, it was pointed out that reparations can be defined in either a broad or narrow sense framework. The broad definition encompasses all efforts aimed at repairing harm which may include both direct and reparative benefits. This has been nicely packaged in the UN Basic principles and guidelines and comprise of restitution,

compensation, rehabilitation, satisfaction and guarantees of non-repetition (United Nations, 2006a). A narrow approach consists of specific measures or programmes to directly benefit the victims (de Greiff, 2006b).

From the analysis of the commission reports of Ghana and Sierra Leone, both approached reparations from a narrow perspective. They interpreted it as specific programmes to acknowledge, recognise and repair harm directed at a specific group that suffered violations. The Sierra Leone TRC however acknowledges the broadness of reparation programmes as discussed in the UN Basic principles and guidelines and draws attention to its other recommendations which have the potential of providing reparative benefits to both the specific victims and the general population who it also considers victims (Truth and Reconciliation Commission, Sierra Leone, vol. II, 2004, p. 242). The range of victims in Sierra Leone however necessitated tact in breaking down who would and who would not be eligible without eliciting divisions. Ghana on the other hand had a clearer victim categorisation, mostly based on self-identification as a victim.

The same ideas were also expressed during the interviews. The difference arose between the respondents from mainly civil society organisations and former staff of the commissions and victims. In both Ghana and Sierra Leone, the former group of respondents had a more textbook definition of reparation and this, I would argue had more to do with their interactions with advocates of the transitional justice paradigm such as international organisations and former staff of other TRCs, particularly the South African TRC. The victim groups in both case viewed reparations as specific benefits they are to get because of the harm they suffered. It is worth noting that in Sierra Leone, I interviewed two categories of victims who bear physical reminders of their suffering which has limited their earning capacity. I also encountered a limited number of victims in Ghana who were primarily not satisfied with the benefits they had received and therefore their views on reparation might be based on their personal experiences and not necessarily reflect the other categories of victim not captured in this study.

In both cases, the justification for taking a narrow approach in defining reparations was to propose programmes that could be easily implemented. By keeping the programmes straightforward and specific, they would not require enormous resources or changes to existing structures during implementation.

12.1.2.2 Context

The second variable of the analysis considers the *context* that influenced the forms of reparations proposed by the commission. It analyses the existing socio-economic, political and cultural conditions that influenced the eventual forms of reparations recommended by the commission.

From both the literature analysis and empirical study, despite a similar approach to the reparation programmes in both Ghana and Sierra Leone based on recognising and acknowledging the victims and the harms, the context that determined which aspects to include in the reparation programme was different.

From the NRC report, Ghana's approach focused on the individual victims who petitioned. The petitioners and commission specified explicit harms and computed the exact cost estimates for the atrocities. A significant portion of the report, specifically, in volume 2, chapters 5-9 contains brief summaries of the victims' petitions and decision of the commission. The context in which the Ghana NRC's recommendations on reparation was framed was to identify specific individuals whose rights had been violated and provide acknowledgement and recognition through the commission process and reparation programme. According to one of the members of the Reparation Committee, the individualised approach to reparation is something the Reparation Committee followed up on. They used the list that the commission had come up with and travelled around the country to pay according to what had been proposed by the commission. As pointed out earlier (7.3), and reiterated by a member of the Reparations Committee, the commission had already laid the ground work by emphasising that the amounts awarded were more symbolic and a token to acknowledge the harm. According to the Committee, the majority of the recipients were grateful and accepting of the payments.

In Sierra Leone, much of the discussion from the empirical study strongly reflected the views already contained in the commission report. According to one of the former TRC staff, it was critical to not exacerbate divisions within the communities. The situation was still extremely fragile, more so, the circumstances for which the reparation programme would be relevant were widespread, that is, everyone suffered harm or loss as a result of the conflict but more importantly, they were in the same situation in terms of the living conditions as a result of the widespread poverty and inadequate

services. Much as the commission focused on individual victims, these were framed as being representative of the general scope of victims.

Furthermore, given that the country was emerging from a devastating war, the commission was aware of the various demands placed upon the government in the reconstruction efforts. It is because of this context that the commission sought to frame reparations as complementary programmes to existing efforts. More so, the specific reparation programmes were structured as opportunities to bring the most disadvantaged or vulnerable as a result of the war to an equal footing to the rest of the community by prioritising their needs.

At the level of framing of reparations, a study of the implementation of the recommendations on reparation seeks to understand the commission's interpretation of reparations and the context that determined the form that the reparations take. From the empirical research, it was particularly interesting to compare whether the views concerning definition and context of reparation by the commission was shared by the rest of the population, and in both cases, there appeared to be agreement with the views of the commission towards reparation. These shared views however failed to be adequately translated into tangible implementations, particularly in the case of Sierra Leone.

12.1.3 Content of the reparation proposal

This level of analysis in studying implementation examines the substance of the reparation proposal. Already in 3.2 and 3.3, I argued that a number of scholars have proposed sets of criteria that would facilitate the designing of reparations with a view to enhance their implementation. From the discussion, de Greiff (2006, pp. 5–13) offers a more comprehensive framework consisting of seven variables that could act as key pointers in designing a comprehensive reparations programme. Below is a summary of how the cases considered these variables while designing the reparation programme.

12.1.3.1 Scope

In determining the beneficiaries for the reparation programme, both the commissions in Ghana and Sierra Leone identified specific individuals based on specific criteria. In

Ghana, in order to access the benefits, victims needed to self-identify by coming forth to give their testimonies. Additionally, the harms for which they could receive reparation needed to be included in the categories identified by the commission (National Reconciliation Commission, 2004, vol. 1, pp. 175–180).

In Sierra Leone, the commission distinguished between general and specific victims. The specific victims were determined based on their level of vulnerability. The commission identified five categories: amputees, other war wounded, children, victims of sexual violence and war widows. This categorisation was also influenced by the government ability to bankroll a reparation programme which necessitated limiting victims to benefit from the specific reparation programme.

12.1.3.2 Completeness

In completeness, the programme designers consider how to ensure that the programmes reach the intended beneficiaries.

de Greiff (2006) identifies two criteria to determine completeness; evidentiary bar and structural issues influencing accessibility (p. 6). In both Ghana and Sierra Leone, the commissions relied on the testimonies of the victims. The commissions then verified the stories. From the discussions with the former NRC staff, it was much more difficult to determine some cases than others, particularly where the evidence was difficult to establish. This was more so in Ghana where the violations occurred several years back.

In terms of the structural procedures for accessing the reparations, both the commissions and the established reparation programmes emphasised the need for easily accessible benefits. A vibrant outreach programme was employed to raise awareness of the commission and the benefits.

In Sierra Leone, the programme was decentralised through the NaCSA structure to the district level. It also offered the possibility of new victims coming forward after the truth commission and registration processes.

In Ghana, this aspect was not discussed in the commission. Instead, a robust outreach programme was utilised to raise awareness. A more centralised system was however

carried out with the Reparations Committee travelling to the different locations to pay out the monetary benefits.

12.1.3.3 Comprehensiveness

This feature considers whether a programme includes the complete range of violations or victims. In both cases, the commissions distinguished between the general violations and victims and the specific violations and victims eligible for reparations. Both identified these features from the testimonies received. In order to ensure comprehensiveness, both commissions proposed both symbolic measures and material benefits. In addition to the specific reparations, both commissions further proposed far-reaching changes to the socio-political and economic structures. These could be interpreted to bring about reparative benefits to the entire society.

12.1.3.4 Complexity

This relates to the different efforts identified by the commission to offer redress. In both the Ghana and Sierra Leone cases, the commissions demonstrated their creativity in attempting to reach as many victims as possible and offer a wide variety of measures. They propose both symbolic and material benefits including monetary awards and property returns. Aspects of service delivery are also included, more so for the case of Sierra Leone.

12.1.3.5 Coherence

This variable is concerned with how the different measures support each other to maximise their value to the victims. de Greiff (2006) distinguishes between internal coherence or how the measures complement each other and external coherence which is concerned with the relationship between the reparation programme and other TJ mechanisms. For internal coherence, the commissions in Sierra Leone and Ghana propose broad based programmes that include the different categories of violations and victims. This included both the monetary and non-monetary aspects.

In terms of external coherence, both reparation programmes emerge from the respective truth commissions thereby linking truth telling to reparations.

12.1.3.6 Finality

On whether or not there is a possibility of pursuing other means for civil redress after receiving the reparation benefits, both commissions in Sierra Leone and Ghana in their reports did not address this topic. This however brings into play the context in which the commissions were established. In both cases, there were already limited options for civil redress, notably the amnesty process in Sierra Leone and indemnity clauses in Ghana. In Ghana however, during the interviews one of the victims stated that in consultation with his lawyer, he planned to open a case in order to have his pensions which he had been excluded from receiving paid. He intended to use the findings from the NRC concerning his case as evidence. He had been unlawfully detained, tortured, dismissed from the military and exiled and the NRC ruled that what he had suffered was unlawful.

In Sierra Leone, I did not encounter any victims with the intention of opening up a case but the reparation programme was still incomplete.

12.1.3.7 Munificence

According to de Greiff (2006), determining the worth of the reparations and its significance to victims is difficult to measure. However, following his categorisation of the worth of the reparations in monetary terms or the dollar value, Ghana and Sierra Leone lie on the lower side of the spectrum. Sierra Leone focused on the non-monetary aspects of reparations and only provided the option of monetary benefits in form of pensions to amputees, victims of sexual violence and other war wounded with 50% or more reduction in earning capacity. It did not specify the upper limit but capped it at not lower than 60,000 Sierra Leonean Leones per month.

In Ghana, in addition to other forms of reparation, it recommended monetary compensation of between one million to thirty million Ghanaian Cedis.

Both commissions therefore focused on emphasising the significance of the commission and reparation programme in recognising and acknowledging the victims and facilitating reconciliation over the monetary awards.

From the analysis of the recommendations in the commissions' report in the cases of Sierra Leone and Ghana, it appeared that they were structured to reflect the above points. In unpacking the proposals on reparation while linking them to the taxonomy, a number of the respondents, particularly the elite in civil society, academia and the former truth commission staff, expressed views that showed an awareness that the reparation programme needs to be comprehensive and holistic. They further agreed that the proposed reparation programmes as they are in the respective reports meet this goal.

Going by the report and the discussions regarding the reparation proposals, it would therefore be logical to assume that the recommendations are implemented, which however is not the case, particularly in Sierra Leone. In Sierra Leone, as discussed in 9.4.5, alternative measures were implemented as opposed to what was proposed in the commission report whereas Ghana mainly focused on one aspect of the reparation programme (8.4.4).

12.1.4 Frameworks for following up and implementation

At this level, a study of implementation examines the options availed by the commission to facilitate the implementation of the recommendations. Two variables have been identified; *a structure to guide the implementation* and, *the opportunities for funding the programme*.

12.1.4.1 Structure

In terms of follow up and implementation *structures*, the two cases in this study took different approaches. The Ghana commission did not propose any implementation structure. The reason behind this, as explained by one of the former NRC staff was that the aspect of proposing an implementation structure did not fall within their mandate. They were tasked with making recommendations regarding reparation, among others and submitting the report to the president, which they successfully carried out.

The Sierra Leone commission in contrast outlined a detailed structure including specific parties responsible for each aspect (figure 2). Not surprisingly, the reason behind this was to ease the process of implementation. With the foundation already laid out, all that had to be done was to set the process in motion. However, based on

the discussions while in the field, it appears that the commission underestimated a number of issues such as the bureaucracy and legality involved in setting up the different units proposed in their structure and more specifically, the enthusiasm of the government and other actors in responding to the recommendations. As stated by one of the former staff of the TRC, they had no reason to doubt the government's compliance to implement the recommendations because it had shown support and commitment to the commission.

Going by the two cases in the study, it is therefore not obvious that one approach automatically leads to a specific result. For instance, in Ghana's case, without a proposed structure, there is a more positive outcome in terms of implementation whereas in Sierra Leone, the outcome is less impressive and a number of the relevant structures have not been utilised in the implementation process.

Considering Ghana and Sierra Leone, it is also important to point out the size of the proposals. The number of beneficiaries in Ghana and the breadth of the reparation programme was not extensive. It consisted of symbolic measures, monetary compensation and a limited education and health service benefits as well as property restitution, community reparation and pensions scheme. The most detailed of these were the symbolic measures and monetary compensation. From the discussions with the former NRC staff, the monetary compensation was the one that required most input in terms of staff and resources in order for it to be carried out. Additionally, emphasis in Ghana was placed on the symbolic value of the NRC process and reparation programme in which the highlight was on acknowledging the systematic violation of human rights and the individuals who had experienced these violations. I found that individuals were more keen on discussing reconciliation, at the individual and national level and whether the whole process contributed to reconciliation, rather than dissecting it up to look at specific measures. The actual beneficiaries were keener on focusing their discussion on the specific benefits.

In contrast, Sierra Leone's reparation programme was quite extensive in terms of beneficiaries and benefits (6.7) consisting of service benefits in health, education, pensions, housing, skills training and microfinance, symbolic and community reparations. It involved incorporating these services into already existing government programmes thereby involving the different line ministries as proposed by the commission. From the discussions, what stands out is that the commission perhaps overlooked the administrative and legal processes of incorporating the reparation

aspect into normal service delivery. Some of the respondents pointed out that these processes such as changing the structures of existing ministries to include reparation would need legislative approval before being carried out. In spite of a detailed structure, the process therefore stalled due to the legality of setting it up as evidenced by the setting up of the reparations unit in NaCSA and the Human Rights Commission, key bodies relevant to the implementation programme which was not immediate.

Going by the cases of Sierra Leone and Ghana, whether or not a structure exists does not necessarily indicate that the recommendations will be implemented.

12.1.4.2 Opportunities for funding

Considering the opportunities for funding, in both Sierra Leone and Ghana, the Acts establishing the commissions made mention of a reparations fund wherein the commissions took it upon themselves to propose funding sources for the funds.

Drawing upon Segovia's (2006a) discussion on financing reparation programmes, whereas the commissions did make suggestions on how to finance the respective reparations fund, the implementation of these suggestions is weak as there was no detailed structure of how this could be followed through to ensure that the funds materialise. For instance, they propose that contributions could be got from perpetrators but neither commission enlisted an extensive perpetrator participation nor proposed mechanisms of how to make perpetrators accountable and therefore be compelled to contribute. The Ghana commission proposed for funds to be sourced from sale of reconciliation memorabilia however these memorabilia were not produced, including the report which would have been a source of funds for the reparation fund. Sierra Leone commission proposed for instance a peace tax and revenue from mineral resources, among others but there are no details of how these can be implemented to generate the required funds.

In both cases, there is a general silence on how to ensure that the funds for implementation are sourced either locally or internationally but rather an assumption that they will somehow be available. The emphasis on voluntariness and willingness to commit by the government and international donors did not materialise post truth commission. In Ghana however, one of the respondents mentioned that the commission estimated the amount which would be required for the reparation

programme which was communicated to the government thus enabling the government to plan adequately although I could not verify this statement or amount from either the report or further interviews. Such an estimate was not determined for the Sierra Leone programme despite the scale of the proposal. In any case, the fact that there was an estimate for how much the monetary compensation would cost for the Ghana case was linked to the quick implementation in Ghana.

Both Sierra Leone and Ghana highlighted a number of avenues that could be used to finance the reparation programme. In both cases however, these were vague suggestions without any enforceability mechanism. There was an emphasis on voluntariness and an implied sense of government and donors' willingness to fund the programmes, an assumption which might not necessarily hold.

12.1.5 Post truth commission

This level of analysis in general examines the processes that take place in the implementation of the recommendation after the end of the commission. It is at this point that the focus of conventional implementation studies lies as they seek to explain what has happened and for some studies why it has happened in such a manner. It consists of three variables; *Responses of the different actors*, an *implementation matrix* and *explanation of the implementation status*.

12.1.5.1 Responses of the actors

In examining the responses of the different actors, a study of implementation considers the reactions of the different stakeholders to the report as well as to the recommendations. These stakeholders might include, the government who is often the main recipient of the report, civil society organisations, international partners and donors, victims, general society, the TRC members and other transitional justice mechanisms, among others. The reaction of key stakeholders can be indicative of the way the implementation is carried out.

A key indicator of government response in the cases of Ghana and Sierra Leone was the release of the government White Paper responding to the report of the commission. In Ghana, the White Paper was released six months after the submission of the report. As discussed in 5.6.1, the tone of the White Paper was positive and the government

communicated its acceptance of the findings and recommendations and its commitment towards implementation. This positive response was reflected in an extensive portion of the recommendations on reparation being implemented and a continuation in following up other aspects, notably the property restitutions. In Sierra Leone, the White Paper was released eight months after the submission, following persistent pressure from civil society groups and growing discontent among the general population over fears that the contents of the report were being doctored. Regarding reparations, it expressed a noncommittal stance and a vague implementation strategy where it already cites impediments to the implementation such as resources (6.9.1). In Sierra Leone's case, the government did not commence a reparation programme citing resource constraints until 2009 when funds were availed by the UNPBF. Resource limitations continue to be a refrain in the Sierra Leone reparation conundrum.

In both cases, civil society activism is credited for pressurising the government to respond regarding the publication of the White Paper and public release of the reports because they kept up the momentum. They further popularised the work of the commissions as well as the findings through wide dissemination of the publically available excerpts but also by keeping the conversation going in the media.

From the two cases, the role of other stakeholders was not apparent. A significant difference though was that in Ghana which was predominantly a domestic initiative, the role or presence of international actors was hardly discussed except in the context of support by international organisations notably ICTJ and members of other TRCs. In Sierra Leone, the international presence was mostly criticised for abandoning the process after the submission of the report.

Stakeholder response immediately following the submission of the report can therefore be one of the determinants to understanding the implementation process.

12.1.5.2 Implementation matrix

The *implementation matrix* variable consists of analysing the output from the implementation process by comparing it to the initial stated goals. It basically seeks answers to the question of what has been carried out or not since the submission of the recommendations and provides a detailed picture of the status of the implementation.

An analysis of the post-truth commission processes has been presented in 5.6.2 and 8.4.4 for Ghana and 6.9.2 and 9.4.5 for Sierra Leone. In both cases, it shows mixed results with either a number of the reparation components not implemented as in Ghana or an alternative strategy mirroring the actual programme being carried out as in Sierra Leone.

A breakdown of what has already been carried out can also be indicative of what is likely to be carried out and the perception of the beneficiaries. In Ghana for instance, it was indicated from the interviews with the Reparations Committee that the process of monetary compensation had been completed and basically closed. It would be unlikely that new cases would be taken up and neither would it be likely that other aspects of the reparation programme would be implemented considering the circumstances such as the change in government. In Sierra Leone, at the time of the field work, the NaCSA staff and victims were still hopeful that resources would be obtained and an agreement would be reached with the various government departments to launch a comprehensive programme like it was intended. Further communication with key respondents however revealed that the estimated costs was not realised and it is unlikely that a comprehensive programme would materialise in the near future.

12.1.5.3 Explanation of the implementation status

The variable *explanation of the implementation status* attempts to unravel the reasons as to why the implementation process is as it appears to be. It further explores the factors that either facilitated or hindered the realisation of the goals.

In conventional implementation studies, a number of variables have been proposed to explain implementation. These variables and the approach was relevant in providing a basis for which aspects to seek out while unpacking the implementation process. However, given the context of reparation proposals and the uniqueness of each programme in terms of how specific it is to a particular case, it was challenging to generalise the variables. More so, as seen in the literature, many of these variables are fluid and as such there is no specific set used to describe implementation as they vary from author to author and from field to field.

The approach in this study was therefore to explain the status in each country independent of what is happening in the other country. This approach was also

precipitated due to the fact that there was no shared knowledge between the two cases. I often inquired into the thoughts of the respondents over the truth commission and reparation process in either Sierra Leone or Ghana, depending on which country I was in and besides a few generalised feedbacks, neither group was keenly following what was going on in the other country.

From the implementation matrix, I established that the implementation was not carried out like it had been envisioned in both countries. I therefore sought out why this was so. Each case had context specific reasons. In Ghana for instance, the issue of politics stood out (8.5). The partisan approach to the truth commission and reparations was considered to have had a negative effect on the outcomes. Regarding the implementation, the general perception was that as long as the current political party remains in power, it was unlikely that any steps will be taken to complete the reparation programme considering that the previous political party was instrumental to setting up the process. It is from this perspective that a number of the respondents were vocal about not politicising issues of the truth commission and reconciliation processes if more wholesome outcomes are to be experienced. Furthermore, a common proposal regarding truth commissions and their recommendations was to enshrine legal safeguards to ensure that irrespective of which party comes into power, they are legally bound to implement the recommendations.

Sierra Leone presented a more nuanced and complex explanations for the status of the implementation (9.5.3 and 9.5.4). The most obvious explanation provided for the delay in implementation was the issue of resources to run the programme. Whereas the resource issue cannot be underestimated, the responses yielded varied layers to understanding the implementation process. A number of respondents, particularly the amputees and war wounded group, argued that implementation has been ignored because victims are not a priority. Whereas the lack of resources is valid, other comprehensive programmes have been carried out such as the DDR, the special court as well as development oriented programmes targeting specific groups such as children under five years and lactating mothers. The subject of sustainability was also equally relevant to the Sierra Leonean case. A number of the respondents expressed the view that they had been abandoned by the international community, which happened to be the key funders of the commission and they were as well expected to continue with the process post truth commission. This point was further linked to the different stakeholders, particularly the government and civil society organisations which were perceived as not having an interest in reparations thereby contributing to

the reduced interest of the international community. Some of the respondents nevertheless argued that given that these stakeholders are reliant on the international funds, they are hardly in a position to make demands but rather are compelled to conform to the programmes determined by the international bodies.

From the responses, whereas there are some recurring themes such as politics and resources, the context in which they are manifested tended to be unique to each case. This level of the model strongly justifies the inclusion of an empirical component in the study of the implementation of reparation as it provides a unique perspective to the whole reparation process.

The model proposed above for studying the implementation of reparations following truth commissions emphasises a broad outlook beyond the recommendations themselves but rather at linkages between the different phases in the pre, during and post truth commission as these have a significant influence in the implementation process.

Analysing the processes that occur before the commission is established, gives an understanding of how and why the reparations recommendations are outlined the way they are. It can also explain the responses of the different stakeholders for instance if reparations did not appear to be a priority or well defined, it can hardly be expected that they will be a priority in the post truth commission phase. Although the literature I examined in implementation studies does not emphasise this aspect of what happens before the stated objectives, Elmore (1979) touches upon it in his discussion on the “backward mapping” of implementation studies in which the reasons for which a policy is required need to first be clearly understood and outlined before the objectives are defined. This approach focuses on clearly specifying the basic components of a policy such as the need for the policy, targets, structure of implementing agencies, abilities and resources and then proposing a policy that meets the criteria.

Similarly, the model explores the phase during the proceedings of the commission. It analyses how the discourse on reparation is confronted and later framed with a focus on how this could have impacted the implementation of the recommendations.

Conventional implementation studies places emphasis on the post policy phase which examines how the implementation has been carried out. Likewise, a post TRC phase analyses what the intended goals were and how these have or have not been achieved.

Additionally, it engages the different stakeholders to understand the dynamics of the implementation and its outcome.

Conclusion

This chapter draws on the existing literature and the experience from the field to propose a framework that can be useful to studying the implementation of the recommendations on reparation. It proposes five levels of analysis: (1) Pre-truth commission, (2) Framing of reparations, (3) Content of the reparation proposal (4) Frameworks for following up and implementation (5) Post truth commission. Such a broad focus takes into account the complexities that reparation programmes encounter which in many cases do not just occur while effecting the recommendations but a combination of issues that occur before and during the period in which the recommendations are made.

In reference to the Ghana and Sierra Leone cases, I highlight the complexities of studying post-truth commission implementation of reparation programmes. In Ghana's case, some aspect of the programme, notably monetary and property restitution were implemented while in Sierra Leone, an alternative version was implemented. This therefore creates uncertainty on what labels to attribute to the progress considering the understanding of implementation from implementation studies. This therefore reinforces the approach of studying reparation programmes in totality and attempting to understand the motivations behind the different processes.

The purpose of the framework is not to propose elements that would contribute to the success or failure of implementation of reparations or on whether or not programmes have been implemented but rather to proposition parameters that could be applied to study the implementation processes. This would contribute to standardising implementation research for reparation programmes following truth commissions.

GENERAL CONCLUSION

Transitional Justice (TJ) has grown in both theory and practice. It has become a buzzword in situations where there have been gross violations of human rights (Krueger, 2016; Nauenberg, 2015). Much of the focus has however been limited to the developments before and during the TJ processes. The amputee victims in Freetown for instance recalled that there was a time when everyone wanted to be associated with them while they were at the Murray Town camp. They had their pictures taken and stories recorded and there was a continuous hive of activity around them. Presently, they could only identify one group, Norwegian Friends of Sierra Leone (SLV), a Norwegian NGO that has worked with them in improving their livelihoods.

The shift in the attitudes regarding TJ processes is particularly detrimental to the post-TJ structures which require a sustained long term response. This study sought to contribute to the post-TJ discourse by studying the follow up frameworks for truth commission recommendations after the end of the commission proceedings. The central question of the thesis was *“what happens to the recommendations on reparations made by truth commissions after the completion of the commission?”* Two groups of sub-questions were further raised. The first group dealt with understanding how truth commissions have approached the issue of reparations and these included the following:

- (1) To what extent did the question of reparation feature in the discussions on TJ measures?*
- (2) What do truth commissions mean when they refer to reparations?*
- (3) What are the determinants for the inclusion or non-inclusion of follow up frameworks in the recommendations?*
- (4) To what degree have proposals on reparation been implemented?*

The second group of sub-questions was concerned with how other fields, notably criminology and implementation studies have approached truth, reparations and implementation. In the first instance, I explore how criminology has interacted with TJ and the understanding of truth, truth commissions and reparation. In general there is limited crossovers between the two fields despite strong claims on how the two can be beneficial to each other's growth. Secondly, owing to the limited focus of TJ on implementation, a second field I look into is implementation studies where I

investigate how implementation studies could contribute to the study of implementation in TJ. This section included the following sub-questions:

(5) How can the understanding of truth and reparations in criminology be applied to truth commissions and reparation programmes?

(6) How can implementation studies contribute to the study of implementation in transitional justice?

The context in which the central question was set stems from the concerns about the lack of follow up of the recommendations made by truth commissions despite compelling arguments about the need to transform the proposals into tangible actions (Hayner, 1996a; Hayner, 1996b, Hayner, 2011; González & Varney, 2013; González, 2013; United Nations, 2006b; United Nations, 2013; UN Commission on Human Rights, 2005). Moreover, there is no established framework that can be used to systematically study the truth commission recommendations and the responses towards them. The goal of the study therefore was to propose a framework that could be used for studying the implementation of truth commission recommendations on reparations.

The strategy undertaken in this thesis was to first of all identify how the question of implementation of the truth commission recommendations is addressed in the context of TJ. My findings show that insufficient attention has been paid to this issue. In cases where studies have attempted to link truth commissions and reparations, the bulk of the discussion is focused on either the design aspects of how to make reparations more meaningful to the beneficiaries or features that facilitate the implementation. These insights are however not enough to explain both the status of the implementation and justify why and how the implementation turned out the way it did. An analysis of recommendations on reparations shows that truth commissions do in fact take the design aspects of the reparations seriously and strive to recommend as comprehensive and meaningful proposals as possible.

The analysis of implementation therefore needs to evolve beyond the post-truth commission phase and include the processes before and after the establishment of the commission.

A qualitative approach was selected for the study which involved a literature analysis and fieldwork in two cases studies, Ghana and Sierra Leone. Two field visits were carried out in each of the cases in 2011 and 2012 where purposely selected respondents were interviewed. The objective of the field visits was to complement the

literature findings. In both cases, the issue of implementation of the truth commission recommendations on reparations was not popular. In Ghana, the process was low key following the payments of compensation to victims and concentrated in the offices of the Reparations Committee at the Attorney General's office consisting of skeletal staff. Similarly, in Sierra Leone, the programme was in limbo constrained by operational challenges.

In the subsequent sections, I highlight the salient findings with an emphasis on how they contribute to answering the research questions. This is followed by the concluding remarks and recommendations for both policy and academic work.

The research question and sub-questions

The central question in this study was *“what happens to the recommendations on reparations made by truth commissions after the completion of the commission?”*

In general, after the end of a truth commission, there is not a lot of effort that goes into following up and implementing their recommendations, particularly on reparation for victims (Aciru, 2017a; Hayner, 2011; Laplante & Theidon, 2007; Parmentier & Aciru, 2016; United Nations, 2013). Likewise, there is limited examination, both scholarly and non-scholarly on issues of implementation. The case studies highlighted in this research reinforce this assertion by showing how interest in post-truth commission processes was significantly lower after the end of the commission. In Accra, I did not identify any civil society organisation focusing on the implementation of the NRCs recommendations while in Sierra Leone, a handful of organisations with an interest in the post-truth commission were identified. The follow-up however was not being carried out in a comprehensive fashion as these organisations cherry-picked specific issues to work on. In both cases as well, a number of recommendations on reparations have not been implemented.

A key observation in studying the follow-up and implementation of the recommendations of truth commissions is that the post-truth commission processes need not be looked at in isolation but should be contextualised through a long term approach that considers how the different stages impact on the decisions and actors in the process. Based on this, below is an examination of the sub-questions.

(1) To what extent did the question of reparation feature in the discussions on TJ measures?

This question reflected upon the context in which truth commissions are established and how the discussions on the inclusion of reparation are framed. As discussed in 3.3.4, the rationale for the selection of the truth commission mechanism and the purpose for which it is established does have repercussions on the discussions surrounding reparation. In my analysis, I considered the driving force behind the establishment of the truth commission and extent to which reparations featured. The two cases discussed in this thesis as well as other illustrative cases highlight this assumption and show that where the discussion on reparation features from early on in the process during the set-up, there is a higher likelihood of sustaining it until implementation.

In Ghana, civil society action played a significant role in shaping the NRC. It emerged as a result of the unavailability of other mechanisms with which to address the past human rights violations and a key component to addressing the past harms was reparation. This aspect is reflected in the NRC act (2000) which among others called on the commission to make recommendations for redress of wrongs. A receptive government further ensured the availability of resources to establish the NRC and facilitate the reparations programme.

In contrast, in Sierra Leone, civil society played a more supportive role during the discussions that established the commission. As one civil society respondent pointed out, they worked within an established framework that had already been determined during the 1999 Lomé peace agreement and the 2000 TRC Act. The priority in 1999 during the signing of the peace agreement was to bring about peace and get the warring parties to ceasefire. Despite the commission being framed around victims, reparations did not feature in either the agreement or the TRC Act but was rather introduced by the commission and included in its report. My hypothesis is that the late introduction hindered the mobilisation of support for reparation.

(2) What do truth commissions mean when they refer to reparations?

This question is aimed at getting a better understanding of what truth commissions mean by reparations. Depending on the context in which it is used, reparations is conceptualised in different ways.

In the first place, I examined the general understanding of reparations within transitional justice. Transitional Justice provides a nuanced discussion of reparation which comprises of both the broad and narrow definitions. The broad definition consists of all measures aimed at repairing harm and offers both direct and reparative benefits (de Greiff, 2006; Roht-Arriaza, 2004). The UN Basic Principles and Guidelines have identified five measures comprising of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence (UN General Assembly, 2006). A narrow definition on the other hand consists of specific measures to provide direct benefit the victims (de Greiff, 2006).

I further examined reparations in the context of criminology and found that in mainstream criminology, reparations is conceptualised from a narrow perspective consisting mainly of compensation and restitution. However, a more restorative justice approach offers a broader conceptualisation of reparations.

Drawing on these discussions, the truth commissions in Ghana and Sierra Leone incorporated a narrow approach to reparations with a focus on programmes directed at benefiting specific individuals. The programmes in each commission were however tailored to meet the broad range of requirements from the different categories of victims.

In Sierra Leone, the beneficiaries for the specific reparations were identified based on their level of vulnerability and this comprised of five categories: amputees, other war wounded, victims of sexual violence, children and war widows. The specific packages were determined after considering the victims needs vis-à-vis the socio-economic context. The focus was therefore on symbolic measures and facilitating access to social services.

In Ghana, the beneficiaries of the reparations were those who identified as victims during the collection of testimonies and suffered any of the violations identified by the commission (National Reconciliation Commission, 2004, pp. 175–180). In determining

what packages to recommend, the commission considered the potential cost of the reparation programme and emphasised token value of measures. It focused on reparation as a recognition and acknowledgment of the harm suffered by the victims. The Ghana commission proposed a combination of one-off monetary payments, symbolic measures, social services and community reparations.

Following the discussion in 12.1.3 about the content of reparation programmes in relation to de Greiff's (2006) taxonomy of reparation efforts, Ghana and Sierra Leone appeared to have designed a comprehensive programme well aware of the challenges of reparation programmes.

(3) What are the determinants for the inclusion or non-inclusion of follow up frameworks in the recommendations?

This question addresses the inclusion or exclusion of frameworks for following up and implementing the recommendations on reparation. In some cases, commissions recommend follow up and implementation frameworks and in some cases, they do not. I identified two factors that explain whether the commission recommends a framework or not. First, the mandate of a commission may require that it proposes an implementation framework. Very few countries have done this such as Kenya and Peru where the establishing Act obligated the commissions to make recommendations for an implementation framework. In the second case, it is out of the deliberation of the respective commissions to elaborate an implementation framework. In most cases however, the recommendations are directed at the government or any other institution that are typically in charge of establishing a follow-up and implementation framework.

Drawing on the case studies, I examined what the specific frameworks were included for following up. In both the establishing Acts, neither required the commissions to propose a follow up and implementation framework. However Sierra Leone elaborated a follow-up framework while Ghana did not. Although it was not clear why the Sierra Leone commission took this route, they proposed a detailed follow-up and implementation framework as discussed in 6.3.4 and 6.3.4.2.

The key issue in this part was whether the frameworks provided an advantage or disadvantage to implementation. The answer to this was not specific as there was mixed results regarding implementation although Ghana, without a proposed

implementation framework registered a more positive outcome regarding implementation. This result alone is however not enough to establish causality between proposal of frameworks and implementation.

(4) To what degree have proposals on reparation been implemented?

This part of the study focused on developing an implementation matrix for the recommendations on reparations. It compared the proposals outlined in the reparation recommendation and the actual outcomes that have taken place. In general, the implementation of recommendations on reparations can take any of three forms, robust implementations, implementing some of the recommendations or implementing none of the recommendations as discussed in 3.1.

For the selected cases, there were a mixed results regarding the implementation. In Ghana, a Reparations Committee was established and funded by the government which was tasked with implementing the recommendations on reparation (8.4). They carried out the monetary compensation however the other recommendations on reparations are still pending.

In Sierra Leone, the structure for following up and implementing the recommendations on reparation was successfully set up. This comprised of specific units in NaCSA and Human Rights Commission of Sierra Leone. However, when it came to the actual implementation, it carried out what I refer to as an alternative strategy to align the reparation activities with the proposed recommendations.

The above discussion aimed at exploring how truth commissions have approached the recommendations on reparation in the context of transitional justice. The second aspect to the study was to examine how other fields, notably criminology and implementation studies have addressed these issues. The salient features are addressed in the ensuing section.

(5) How can the understanding of truth and reparations in criminology be applied to truth commissions and reparation programmes?

From the analysis on the linkage between criminology and TJ, two issues stand out. First, mainstream criminology approaches truth and reparations from the classical understanding of how crime and justice is supposed to work in a context in which such systems are actually in existence and operational. Transitional societies emerging from a conflict or authoritarian regime however present a much more complex set of challenges that often requires thinking and working outside the box. TJ as a field has stepped outside the box and adapted and developed mechanisms and processes, many of which more traditional fields might find wanting but can be applied in specific contexts.

Second, a significant amount of literature emphasises the marginalization of international crimes from mainstream criminology. Given the scale and enormity of these crimes, some scholars have questioned as to why the field that specializes in understanding crime has kept international crimes under the radar. A number of scholars have attributed this to factors such as the rigid definition of crime as well as the methodological and theoretical challenges which mainstream criminology has been rather reluctant to approach Bijleveld (2008).

Nevertheless, this gap is slowly being bridged. A number of publications on international crimes have been published in criminology specific journals and books. Additionally, more scholars of international crimes and TJ are broaching the subject and vice versa.

Much of the emphasis on linking criminology and TJ has focused on how international crimes and TJ can benefit from criminology. This could be both in theory and in practice for instance through applying criminological theories and methods to analyse international crimes and the TJ mechanisms. Existing TJ programmes can also be studied as has been done in this study thereby contributing to the development of new frameworks of analysis.

With specific reference to truth seeking and reparations, I however argue that criminology could greatly benefit from TJ. These are two of the key mechanisms that TJ scholars and practitioners have been preoccupied with and as such have developed a detailed body of theory and practice. In reparation for instance, much of the literature

in criminology approaches it from a narrow scope of known victim and perpetrator, limited range of the types of reparation and a restricted procedure for obtaining or awarding reparation. TJ on the other hand seems to have covered various angles including instances where the perpetrator or direct victims are unknown or where it involves groups or perpetrators and victims. The same can be said of truth seeking where TJ particularly through the practice of truth commissions portray the nuances that accompany truth seeking. This is an aspect that has not been fully explored in mainstream criminology where truth is portrayed as a commodity to facilitate the judicial process although to a lesser extent, particularly in RJ and victimology, the value of truth has been explored.

Several scholars have argued that there is a positive link between TJ and Criminology. I concur with them in terms of how both fields can mutually contribute to the others growth and possibly develop a spin off field of Criminology of international crimes. Considering that I approach criminology from a TJ perspective, I view it as a field that has dealt within the comfortable zone. Comfortable in the sense that it approaches crime within the conventional parameters of crime. Whereas it deals with the concepts underpinning this study i.e. truth and reparations, much of it is based in this context with individualised approaches. In this regard I find Criminology would have a lot to learn from TJ particularly in the way it deals with the grey areas of crime for instance normally conforming individuals becoming perpetrators, the unknown victims and perpetrators and dealing with large scale crimes among others.

(6) How can implementation research contribute to the study of implementation in transitional justice?

Implementation research involves identifying and examining the factors that have contributed to the realisation or non-realisation of policy objectives. This is however a complex process particularly where multiple variables are involved.

From the analysis of the TJ literature on post-truth commissions and empirical study in Ghana and Sierra Leone, a key finding is that there is neither a specific approach to implementation nor systematic methodology for studying the implementation of the recommendations. Implementation is context specific and dependent on the socio-political and economic dynamics in a particular case.

Sierra Leone's case appears to have had a clear and workable framework and as a researcher, I was excited with such a framework because it would provide a step by step guide thereby identifying the bottlenecks at each level. This was however not the case because on the ground, all of the implementation rotated around one institution, NaCSA rather than a decentralised scheme with each ministry playing its role.

Ghana's case was not entirely different in the sense that the implementation was centralised within one body. The advantage it enjoyed was that it received the adequate funding to carry out the process. However, it restricted its activities to only the monetary aspects.

Fundamental to reparations being actually implemented is the attitude of the sitting regime and political coalitions towards reparations. This explains why there has been relative success in some cases which might not be considered economically strong. The victims in Ghana and Sierra Leone definitely know that if the government and international community wanted to get the reparation programme moving, it would have already been rolling. The common explanation for the non-implementation, particularly in Sierra Leone was the lack of resources to finance the programme as well as the detailed structure of the services oriented benefits that necessitated institutional changes to be carried out. Such arguments have however been referred to as a tactic of the government to complicate the issue by employing "a new technical language of procedures and prerogatives ... to explain why policies cannot be implemented." (Colvin, 2006:201). This perspective was prevalent in view of ongoing government projects.

One of the more striking issues in the study was the position of the victims and their role in the whole transitional process. It is impossible to talk about the implementation without factoring in the victims. Ideally, a research on implementation would have inquired about and assessed the impact of the reparations in the victims' wellbeing and whether the intentions have been fulfilled. But it took a different turn, particularly in Sierra Leone where victims were still waiting for what had been promised to be delivered.

The proposed framework for studying implementation: An integrated approach

This study highlighted the lack of a framework within TJ for studying the implementation of truth commission recommendations. It argues that despite a number of studies into the post-truth commission developments, there has not been a systematic methodology advanced to study how the recommendations have been followed up and implemented. The approaches to analysing the recommendations have been disjointed. Some of the studies have been limited to the design aspects where they propose variables that could be relevant to establishing a robust reparations programme whereas others have looked into elements that could facilitate or frustrate the programme.

Following the literature analysis and the experiences derived from the field, this study proposes a framework that could be used to study the implementation of the recommendations of truth commissions. I refer to it as an integrated approach which views implementation as part of a long term process rather than an isolated activity emerging after the end of the commission. It holds that implementation is affected both by the prevailing circumstances as well as the dynamics that existed before and during the truth commission.

The framework therefore proposes five key levels of analysis of truth commission recommendations on reparations: (1) Pre-truth commission, (2) Framing of reparations, (3) Content of the reparation proposal (4) Frameworks for following up and implementation (5) Post-truth commission.

This broad focus gives the opportunity to study the complexities of why the implementation in a specific case is taking a certain direction. It not only asks what is happening with the implementation but looks into why it is happening the way it is.

Final remarks

The central question posed seemed innocuous. *“What happens to the recommendations on reparations made by truth commissions after the completion of the commission?”* It however ended up showing the complexities involved following the end of the truth commission. The basic assumption following the establishment of a truth commission is that its recommendations will be fully or for the most part be implemented. There is

significant attention and resources poured into the truth commission process but this is usually lacking in the post-truth commission phase as can be seen in the implementation stage. Classic implementation studies show that studying implementation involves assessing the output against the policy objectives and in this way, implementation is deemed a success or failure. It is however difficult to label the implementation process following truth commissions in these terms as the results show more nuances. Can the Sierra Leone reparation programme be labelled a failure for the alternative programmes it implemented that deviated from the original proposals or Ghana's a success for following up on the monetary compensations? Studying truth commission recommendations therefore needs to move beyond the superficial labels and address the complex details involved in the establishment, during the proceedings and after the end of the commissions in order to place implementation into the right context.

RECOMMENDATIONS

This study examined the linkages between truth commissions and the recommendations they make on reparations for victims. It explored issues of compliance and/or noncompliance to the recommendations, the follow-up and implementation mechanisms and the interactions between the different actors. Based on the findings and conclusions, the following recommendations are suggested. These recommendations are considered relevant for academics, policy makers and practitioners.

Applying the proposed framework

The framework proposed in this study was developed after identifying the gaps in TJ and implementation studies literature following both the literature review and field work. From the literature, I established that a number of the cases focused on the design aspect rather than actual implementation while those that focused on analysing specific cases concentrated on identifying key areas that could impact implementation. An examination of the selected cases also found missing gaps which necessitated going to the field. The framework was therefore developed after identifying the limitations encountered both in the literature analysis and the field work. I drew upon literature from implementation studies to ascertain if the proposed framework is comprehensive in scope. An empirical application of the proposed framework for studying truth commissions would therefore be relevant. Additionally, this study was based on only two cases. It would therefore be beneficial to test its applicability to other cases as well.

Post-truth commission focus

In researching post-truth commissions, it is striking that there is very limited information regarding how their recommendation have been addressed. Almost everything suddenly stops with the report. A number of studies have rightly dealt with issues concerning the operations of the truth commission as well as how they deal with concepts such as truth and reconciliation, among others and how they contribute to goals such as good governance and democratisation. This proposal therefore calls on more scholarly and practitioner focus on post-truth commission processes concerning reparation. This could be facilitated by directing funds and grants for research to institutions to specialise on following up the processes set up by the commissions.

Longitudinal studies of truth commissions

This study occurred a number of years after the truth commissions in the selected cases had already taken place. I noticed a lot of apathy towards issues concerning truth commissions because it was considered to have been a completed process. I therefore missed out on the raw experiences that determined the direction of the commissions. Where applicable, a longitudinal study of a truth commission would be relevant thus providing a more comprehensive understanding of the dynamics of the mechanism and the implementation of the recommendations. Such studies would ideally take into account the before, during and after processes.

Empowering local ownership

In both Sierra Leone and Ghana, there was a visibly low level of participation of victims and civil society organisations in advocating for the implementation of the recommendations. The beneficiaries did not seem to be in a position to mount a consistent and strong advocacy network to put pressure to implement. Additionally, it also seemed that the rest of society had moved on. This proposal therefore addresses the operational factors and calls on a long term approach to the mechanism of truth commissions. This could be achieved by recognising and encouraging local capacity, ownership and direction of the process. Truth commissions need to be locally driven in a bottom-up process with the local actors actively defining the process.

Victim-centred implementation process

From the study, my impression was that the implementers have approached implementation from a bureaucratic top-down process. In Ghana, the truth commission report and list of victims was the yardstick for determining the reparation benefits. The victims who felt dissatisfied with either the benefits or the process were faced with a cumbersome petition process. In Sierra Leone, the implementation process largely excluded the victims in the decision-making processes. This created mistrust and suspicion towards NaCSA and the government. This implementation approach in both cases does not appear to consider the nuanced dimensions of victims needs resulting in dissatisfaction in the overall process. I would therefore recommend that the implementation process should as much as possible be victim centred. Such an

approach would also consider the needs of the victims that fell outside the scope of those identified by the commission for specific reparation. This is particularly relevant in the context of Sierra Leone where the beneficiaries of the specific reparations were determined by the commission rather than the individual self-identifying as a victim.

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